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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1780

Procurement Methods; Correction

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Correcting amendment.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), is correcting its portion of USDA's uniform federal assistance final rule, that was published in the **Federal Register** on February 16, 2016 (81 FR 7695) by revising the procurement methods section.

DATES: *Effective Date:* July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Ben Shuman, Water and Environmental Programs, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9011, Telephone: 202–720–1784, email: *Ben.Shuman@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 26, 2013, OMB published *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* final guidance (78 FR 78589) giving all federal award making agencies one year to implement conforming changes to all regulations as needed to address changes in requirements associated with this new Uniform Guidance. On December 19, 2014, OMB published a joint interim final rule and conforming changes in the **Federal Register** (79 FR 75871), making the conforming changes for award making agencies across the Federal government. Included in this joint interim final rule were conforming changes to regulations regarding procurement methods under Federal awards for the Rural Utilities Service Water and Waste Disposal program to ensure consistency with the Uniform Guidance.

Need for Correction

The United States Department of Agriculture finalized its portion of the conforming changes in the **Federal Register** on Tuesday, February 16, 2016 (81 FR 7695), that inadvertently stated instructions in § 1780.72, as published, which contains errors that may prove to be misleading and need to be clarified.

List of Subjects in 7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

Accordingly, 7 CFR part 1780 is corrected by making the following correcting amendment:

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 1. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

■ 2. Revise § 1780.72 to read as follows:

§ 1780.72 Procurement methods.

Procurement shall be made by one of the following methods and in accordance with requirements of 2 CFR 200.320: Micro-purchases, procurement by small purchase procedures, procurement by sealed bids (formal advertising), procurement by competitive proposals, or procurement by noncompetitive proposals. The sealed bid method is the preferred method for procuring construction.

Dated: July 13, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–17303 Filed 7–21–16; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2016–0134]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to reflect the new maximum civil penalty amount the agency can assess for a violation of the Atomic Energy Act of 1954, as amended (AEA), or any regulation or order issued under the AEA. By interim final rule, the NRC changed this amount from $140,000 to $280,469 per violation per day, as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act). This action revises the Enforcement Policy so that dollar amounts in the policy correspond to the agency's revised civil penalty amount, and also provides guidance regarding instances where the NRC may exercise discretion in mitigating the amount of a civil penalty.

DATES: This revision to the Enforcement Policy is effective on August 1, 2016. The Commission will apply the revised Enforcement Policy to any penalties assessed on and after the effective date; the penalty is not based on the date that the violation occurs.

ADDRESSES: Please refer to Docket ID NRC–2016–0134 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0134. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the

ADAMS Public Documents collection *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The revised Enforcement Policy is available in ADAMS under Accession No. ML16197A561, and on the NRC's public Web site at *http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html*.

- *NRC's PDR*: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Russell Arrighi, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0205, email: *Russell.Arrighi@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the 2015 Improvements Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) and required all agencies to adjust for inflation their levels of civil monetary penalties via rulemaking by July 1, 2016, to be effective no later than August 1, 2016. In an interim final rule published in the Rules and Regulations section of the **Federal Register** (81 FR 43019; July 1, 2016), the NRC is amending its regulations to implement the 2015 Improvements Act by adjusting the amount in § 2.205(j) of title 10 of the *Code of Federal Regulations* (10 CFR), according to a statutory formula based on the Consumer Price Index (CPI), from $140,000 to $280,469. This amount represents the new maximum civil penalty that the NRC may impose for a violation of the AEA, or any regulation or order issued under the AEA, per violation per day. Starting in January 2017, the 2015 Improvements Act also requires that the NRC make annual inflation adjustments to the maximum civil penalty amount in 10 CFR 2.205, rounded to the nearest multiple of $1.

To incorporate the updated maximum civil penalty amount specified in its regulations, the NRC is issuing a revision to its Enforcement Policy (ADAMS Accession No. ML16197A561). Specifically, the NRC is updating Table A in Section 8.0, "Table of Base Civil Penalties," which currently lists $140,000 as the maximum civil penalty amount the agency may assess for the most significant severity level of violation. To promote regulatory certainty and save NRC staff resources by lessening the chances that the Enforcement Policy will have to be revised on an annual basis alongside 10 CFR 2.205 resulting from minor increases in inflation (less than one half percent), the maximum civil penalty amount in the revised Table A will be calculated by rounding the maximum civil penalty amount in 10 CFR 2.205 down to the nearest multiple of $10,000 (assuming the amount in 10 CFR 2.205 is not already a multiple of $10,000). Therefore, the new maximum civil penalty in Table A is now $280,000, rounded down from $280,469. The 2015 Improvements Act does not limit the Commission's authority to exercise discretion and assess civil penalty levels below the statutory maximum, and the gains to be realized from a more stable table of base civil penalties outweighs any arguable loss of deterrent effect from rounding this maximum figure down, at most, $9,999 in a given year. Additionally (and as stated in the Preface to the Enforcement Policy), this is a statement of policy, not regulation, and the Commission still reserves the right to deviate from the Enforcement Policy where particular circumstances warrant and assess the full statutory maximum.

The revised Table A in Section 8.0 of the Enforcement Policy also now includes a note explaining how the table's maximum civil penalty amount is generated as a result of rounding down from the number in 10 CFR 2.205. The note also explains that other amounts listed in the table have been adjusted to maintain the same proportional relationship between penalties. The revised table also now includes a footnote explaining that the maximum civil penalty is adjusted on an annual basis to put the regulated community on notice that the NRC may periodically update the amount in 10 CFR 2.205 pursuant to the 2015 Improvements Act, which would necessitate a change to the amounts in Table A in Section 8.0 of the Enforcement Policy. In the event of such an update, the NRC may assess civil penalties consistent with the updated amount in 10 CFR 2.205 even if it has not yet performed an update to Table A (though the NRC will strive to provide timely updates of the Enforcement Policy when necessitated by updates to 10 CFR 2.205). Additionally, as stated in Section 6 of the FCPIAA (28 U.S.C. 2461 note), when the NRC increases civil penalty amounts through rulemaking pursuant to the 2015 Improvements Act, it will apply those increased amounts when assessing any penalty after the effective date of that rulemaking, regardless of whether the underlying violation occurred before that effective date.

The NRC is not adjusting the civil penalty amounts in Table A for the "loss, abandonment, or improper transfer of disposal of regulated material, regardless of the use or type of licensee," other than to note that these values will be periodically reviewed and updated, since these civil penalty amounts are determined by the estimated or actual cost of authorized disposal.

Lastly, because the agency's authority to issue civil penalties for violations of the AEA has more than doubled as a result of the 2015 Improvements Act, the NRC is also including new language in Section 3.6 of the Enforcement Policy, "Use of Discretion in Determining the Amount of a Civil Penalty," to confirm that, notwithstanding the outcome of the normal civil penalty process, the agency may take into account mitigating factors based on the merits of an individual case, including the ability of various classes of licensees to pay. It is not the NRC's intention that the economic impact of a civil penalty be so severe that it adversely affects a licensee's ability to safely conduct licensed activities or puts a licensee out of business. Section 3.6 now allows NRC staff to consider enforcement discretion for cases where there is a concern that imposition of a base civil penalty would be overly punitive rather than a deterrent for the individual or licensee.

II. Congressional Review Act

This policy statement is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 6th day of July, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting, Secretary of the Commission.

[FR Doc. 2016–16476 Filed 7–21–16; 8:45 a.m.]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 602, 603, and 606

RIN 3052–AD17

FCA Organization; Updates and Technical Corrections

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) issues a final rule amending its regulations to reflect changes in the Agency's organizational structure and correct the zip code for the field office located in Irving, TX.

DATES: This regulation will become effective no earlier than 30 days after publication in the **Federal Register** during which either one or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mike Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4434; or Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objective of this final rule is to reflect changes to the FCA's organizational structure and correct the zip code for the field office located in Irving, TX. In addition, references in our regulations to various FCA offices, which have changed, have been revised. We also are re-ordering the list of FCA offices into a more logical progression that is consistent with FCA's organizational chart.

II. Overview

On April 27, 2016, the FCA Board approved an organizational chart that separated the unrelated functions of the Office of Management Services (OMS) into the Office of Agency Services (OAS) and the Office of the Chief Financial Officer (OCFO). This change will allow the Directors of the new offices to better focus on the core functions and duties of the offices.

III. Organizational Structure

The Freedom of Information Act, 5 U.S.C. 552, requires, in part, that each Federal agency publish in the **Federal Register**, for the guidance of the public, a description of its organization structure. Accordingly, we revise our regulations by:

(1) In § 600.2, changing the zip code for the Irving, TX field office from 75602–3957 to 75062–3906;

(2) In § 600.4,

(a) Including the Office of the Chief Financial Officer in FCA's organization structure;

(b) Including the Office of Agency Services in FCA's organizational structure;

(c) Removing the Office of Management Services from the FCA's organizational structure; and

(d) Re-ordering the list of FCA offices into a more logical progression that is consistent with FCA's organizational chart.

(3) In §§ 602.8, 603.340, and 606.670, changing the Office of Management Services to the Office of Agency Services, and corresponding office name abbreviations, where appropriate;

(4) In § 602.25, removing "Regulation and Policy Division" and changing the Office of Policy and Analysis to the Office of Regulatory Policy.

IV. Certain Findings

We have determined that the amendments involve Agency management and personnel and other minor technical changes. Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553(a)(2). Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to Agency management and personnel and a minor technical change only and have no direct impact on the public and, therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(A) and (B) of the APA, an agency may publish regulations in final form when they involve matters of agency organization or where the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. As discussed above, these amendments result from recent office reorganizations. Because the amendments will provide accurate and current information on the organization of the FCA and update the citation to the Act, it would be contrary to the public interest to delay amending the regulations.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System (System), considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 600

Organization and functions (Government agencies).

12 CFR Part 602

Freedom of information.

12 CFR Part 603

Privacy.

12 CFR Part 606

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

For the reasons stated in the preamble, parts 600, 602, 603, and 606 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 600—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 5.7, 5.8, 5.9, 5.10, 5.11, 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2241, 2242, 2243, 2244, 2245, 2252, 2279aa–11).

§ 600.2 [Amended]

■ 2. Amend § 600.2 in paragraph (b) by removing the zip code "75602–3957" and adding in its place the zip code "75062–3906."

■ 3. Revise § 600.4 to read as follows:

§ 600.4 Organization of the Farm Credit Administration.

(a) *Offices and functions.* The primary offices of the FCA are:

(1) *Office of Inspector General.* The Office of Inspector General conducts independent audits, inspections, and investigations of Agency programs and operations and reviews proposed legislation and regulations.

(2) *Secretary to the Board.* The Secretary to the Board serves as the

parliamentarian for the Board and keeps permanent and complete records and minutes of the acts and proceedings of the Board.

(3) *Equal Employment and Inclusion Director.* The Office of Equal Employment and Inclusion manages and directs the Agency-wide Diversity, Inclusion, and Equal Employment Opportunity Program for FCA and FCSIC. The office serves as the chief liaison with the Equal Employment Opportunity Commission and the Office of Personnel Management on all EEO, diversity, and inclusion issues. The office provides counsel and leadership to Agency management to carry out its continuing policy and program of nondiscrimination, affirmative action, and diversity.

(4) *Designated Agency Ethics Official.* The Designated Agency Ethics Official is designated by the FCA Chairman to administer the provisions of title I of the Ethics in Government Act of 1978, as amended, to coordinate and manage FCA's ethics program and to provide liaison to the Office of Government Ethics with regard to all aspects of FCA's ethics program.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs performs Congressional liaison duties and coordinates and disseminates Agency communications.

(6) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight regulates and examines the Federal Agricultural Mortgage Corporation for safety and soundness and compliance with law and regulations.

(7) *Office of the Chief Operating Officer.* The Chief Operating Officer has broad responsibility for planning, directing, and controlling the operations of the Offices of Management Services, Examination, Regulatory Policy, and General Counsel in accordance with the operating philosophy and policies of the FCA Board.

(8) *Office of Agency Services.* The Office of Agency Services manages human capital and administrative services for the Agency. This includes providing the following services to the Agency: Staffing and placement, job evaluation, compensation and benefits, payroll administration, performance management and awards, employee relations, employee training and development, contracting, acquisitions, records and property management, supply services, agency purchase cards, design, publication, and mail service.

(9) *Office of the Chief Financial Officer.* The Office of the Chief Financial Officer manages and delivers timely, accurate, and reliable financial services to the Agency. The office establishes financial policies and procedures and oversees the formulation and execution of the Agency's budget. The office reports periodically on the status of the Agency's financial position, results of operations, and budgetary resources. It also oversees the Agency's travel management, internal controls, and personnel security programs.

(10) *Office of Regulatory Policy.* The Office of Regulatory Policy develops policies and regulations for the FCA Board's consideration; evaluates regulatory and statutory prior approvals; manages the Agency's chartering activities; and analyzes policy and strategic risks to the System.

(11) *Office of Examination.* The Office of Examination evaluates the safety and soundness of FCS institutions and their compliance with law and regulations and manages FCA's enforcement and supervision functions.

(12) *Office of Information Technology.* The Office of Information Technology manages and delivers the Agency's information technology, data analysis infrastructure, and the security supporting Agency technology resources.

(13) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the FCA Chairman, the FCA Board, and Agency staff.

(b) *Additional information.* You may obtain more information on the FCA's organization by visiting our Web site at *http://www.fca.gov.* You may also contact the Office of Congressional and Public Affairs:

(1) In writing at FCA, 1501 Farm Credit Drive, McLean, Virginia 22102–5090;

(2) By email at *info-line@fca.gov*; or

(3) By telephone at (703) 883–4056.

PART 602—RELEASING INFORMATION

■ 4. The authority citation for part 602 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.59 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2277a–8); 5 U.S.C. 301, 552; 12 U.S.C. 1821(t); 52 FR 10012; E.O. 12600; 52 FR 23781, 3 CFR 1987, p. 235.

§ 602.8 [Amended]

■ 5. Amend § 602.8 as follows:

■ a. In the second sentence of paragraph (a), by removing the words "Office of Management Services (OMS)" and adding in their place the words "Office of Agency Services (OAS)."

■ b. In paragraphs (b) and (c), by removing the abbreviation "OMS" and adding in its place the abbreviation "OAS" each place it appears.

§ 602.25 [Amended]

■ 6. Amend § 602.25 by removing the words "Regulation and Policy Division, Office of Policy and Analysis" and adding in their place the words "Office of Regulatory Policy."

PART 603—PRIVACY ACT REGULATIONS

■ 7. The authority citation for part 603 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. app. 3, 5 U.S.C. 552a(j)(2) and (k)(2).

§ 603.340 [Amended]

■ 8. Amend § 603.340 in paragraphs (a) and (b) by removing the words "Office of Management Services" and adding in their place the words "Office of Agency Services" each place they appear.

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

■ 9. The authority citation for part 606 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 606.670 [Amended]

■ 10. Amend § 606.670 in paragraph (c) by removing the words "Office of Management Services" and adding in their place the words "Office of Agency Services."

Dated: July 13, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–16962 Filed 7–21–16; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1544]

Federal Reserve Policy on Payment System Risk; Procedures for Measuring Daylight Overdrafts

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has revised part II of the Federal Reserve Policy on Payment System Risk (PSR policy) related to the procedures for measuring balances intraday in institutions' accounts at the Federal

Reserve Banks (Reserve Banks) to conform with enhancements to the Reserve Banks' same-day automated clearinghouse (ACH) service previously approved by the Board.

DATES: *Effective Date:* September 23, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Walker, Assistant Director (202–721–4559), Jason Hinkle, Manager, Financial Risk Management (202–912–7805), or Michelle D. Olivier, Senior Financial Services Analyst (202–452–2404), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

The Board's PSR policy establishes the procedures, referred to as posting rules, for the settlement of credits and debits to institutions' Federal Reserve accounts for different payment types.[1] The application of these posting rules determines an institution's intraday account balance and whether it has incurred a negative balance (daylight overdraft).

As announced on September 23, 2015, the Board approved enhancements to the Reserve Banks' FedACH® SameDay Service (FedACH SameDay Service) effective September, 23, 2016.[2] The enhancements are intended to align the Reserve Banks' existing opt-in same-day ACH service with amendments to NACHA's Operating Rules and Guidelines.[3] Under the newly enhanced Reserve Bank service, all receiving depository financial institutions will be required to participate in same-day ACH, and originating depository financial institutions will be required to pay a fee to receiving depository financial institutions for each same-day ACH forward transaction. The NACHA amendments, as incorporated into the Reserve Bank Operating Circulars, will become effective in multiple phases, beginning with same-day credit and return transactions this September and followed by same-day debit transactions in September 2017. Upon implementation of the first phase, the Reserve Banks' current opt-in same-day ACH service will cease to exist and will be supplanted by the newly-enhanced same-day service. The PSR policy's posting rules for forward and return same-day ACH transactions are being updated to conform to the Reserve Banks' new FedACH SameDay Service, effective September 23, 2016.

Under the Reserve Banks' current same-day ACH service, credits and debits for forward same-day ACH transactions post at 5:00 p.m.[4] Beginning September 23, 2016, credits and debits for same-day ACH credit transactions will post at 1:00 p.m. or 5:00 p.m., depending on when the ACH file is received by the Reserve Banks for processing. Forward ACH debit transactions will be eligible to settle same-day beginning September 15, 2017, as part of the implementation of the second phase of the NACHA rule amendments, and credits and debits for same-day ACH debit transactions will post according to the same posting rules as same-day ACH credit transactions.[5] The posting of future-dated ACH forward transactions will not be affected, and credits and debits for these transactions will continue to post at 8:30 a.m. on the effective settlement date.

The approved enhancements effective this September also alter the settlement of ACH return items processed by the Reserve Banks. Under the current posting rules, credits and debits for returns of future-dated and same-day ACH forward items post either at 8:30 a.m. or in the afternoon at 5:00 p.m. and 5:30 p.m., respectively, with the specific posting time determined by when the item is received by the Reserve Banks. Effective September 23, 2016, all ACH return items, regardless of whether the associated forward item was future-dated or same-day, will post at the next available posting time or following the settlement of the associated forward transaction. Thus, credits and debits for return items will post at 8:30 a.m., 1:00 p.m., 5:00 p.m., or 5:30 p.m., with the specific posting time determined by when the item is received by the Reserve Banks.[6]

Policy on Payment System Risk

The Federal Reserve Policy on Payment System Risk, section II.A, under the heading "Procedures for Measuring Daylight Overdrafts" and the subheadings "Post at 8:30 a.m. eastern time," "Post at 1:00 p.m. eastern time," "Post at 5:00 p.m. eastern time," and "Post at 5:30 p.m. eastern time," is amended as follows:

Post at 8:30 a.m. eastern time:

+/− Term deposit maturities and accrued interest

+/− Government and commercial ACH transactions, including return items[7]

+/− Commercial check transactions, including returned checks[8]

+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time

+ Advance-notice Treasury investments

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[1] The Board's PSR policy is available at *www.federalreserve.gov/paymentsystems/psr_policy.htm.*

[2] 80 FR 58248 (Sep. 28, 2015).

[3] NACHA, whose membership consists of insured financial institutions and regional payment associations, establishes network-wide ACH rules through its Operating Rules & Guidelines. As an ACH operator, the Reserve Banks, through Operating Circular 4, incorporate NACHA's Operating Rules & Guidelines as rules that govern clearing and settlement of commercial ACH items by the Reserve Banks, except for those provisions specifically excluded in the Operating Circular.

[4] All times are eastern time.

[5] Enhancements to the Reserve Banks' same-day ACH service will alter treatment of check truncation items that settle through FedACH. A check truncation item is a check that has been converted into an ACH debit entry for presentment and settlement over the ACH network based on an agreement between the collecting and paying banks. Under the current posting rules, check truncation transactions post at 5:00 p.m. on the current business day. Beginning September 23, 2016, check truncation transactions will post at the same time as other ACH debit transactions at 8:30 a.m. on the next business day and will post either next-day or same-day, as appropriate, beginning with phase two of the NACHA rule amendments. At this time, the Reserve Banks do not have any volume associated with check truncation items.

[6] Paper returns, FedLine Web returns, paper notifications of change (NOCs) and FedLine Web NOCs will only be processed twice daily at 2:15 a.m. and 2:45 p.m. As such, these transactions will post at 8:30 a.m. or 5:00 p.m., depending on when the item is received by the Reserve Banks.

[7] Institutions that are monitored in real time must fund the total amount of their commercial ACH credit originations in order for the transactions to be processed. If the Federal Reserve receives commercial ACH credit transactions from institutions monitored in real time after the scheduled close of the Fedwire Funds Service, these transactions will be processed at 12:30 a.m. the next business day, or by the ACH deposit deadline, whichever is earlier. The Account Balance Monitoring System provides intraday account information to the Reserve Banks and institutions and is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. For more information on ACH transaction processing, refer to the ACH Settlement Day Finality Guide available through the Federal Reserve Financial Services Web site at *http://www.frbservices.org.*

The federal government will not participate in the same-day ACH upon initial implementation in September 2016. ACH forward transactions originated or received by the federal government will not be eligible for same-day settlement and will settle on the next business day, or on a future date as indicated by the effective settlement date.

[8] For the three commercial check transaction posting times, the Reserve Banks will post credits and debits to institutions' accounts for checks deposited and presented, respectively, at least 30 minutes before the posting time.

- Penalty assessments for tax payments from the Treasury Investment Program (TIP)[9]

Post by 1:00 p.m. eastern time:

+/− Commercial check transactions, including returned checks

+/− FedACH SameDay Service transactions, including return items

+ Same-day Treasury investments

Post at 5:00 p.m. eastern time:

+/− FedACH SameDay Service transactions, including return items[10]

+ Treasury checks, postal money orders, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time

+ Local Federal Reserve Bank checks; these items must be presented before 3:00 p.m. eastern time

Post at 5:30 p.m. eastern time:

+/− FedACH SameDay Service return transactions

+/− Commercial check transactions, including returned checks

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority, July 18, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–17334 Filed 7–21–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5431; Directorate Identifier 2015–CE–044–AD; Amendment 39–18593; AD 2016–15–02]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all M7 Aerospace LLC Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. This AD was prompted by reports of multiple cracks in the steel horizontal tube of the cockpit control column. This AD requires inspection of the cockpit control column horizontal tube for cracks and repair or replacement of the cockpit control column as necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective August 26, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 26, 2016.

ADDRESSES: For service information identified in this final rule, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5431.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5431; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all M7 Aerospace LLC Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. The NPRM published in the **Federal Register** on April 1, 2016 (81 FR 18804). The NPRM was prompted by reports of multiple cracks in the cockpit control column horizontal tube at the corners of the access panel cutout, at the pulley bolt welds, and at the elevator arm weld in the steel horizontal tube of the control column on M7 Aerospace SA26, SA226, and SA227 airplanes. The NPRM proposed to require inspection of the cockpit control column horizontal tube for cracks and repair or replacement of the cockpit control column as necessary. This condition, if not corrected, could result in partial or complete control column failure with partial or complete loss of pitch and/or roll control. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (81 FR 18804, April 1, 2016) and the FAA's response to the comment.

Request for Previously Done Credit

Michael O'Brien at Bearskin Airlines commented they had been complying with this AD by accomplishing the service bulletins that are listed in the proposed AD. He asked if it would be acceptable to just accomplish a technical records research to see when the required actions were last done.

We agree that credit should be given for actions previously done with the service bulletins called out in the NPRM. The NPRM already allows for this with the phrase "unless already done" in paragraphs (g)(1) and (2) of the NPRM.

Because the requested change is already part of this AD, we have not changed the final rule AD action based on this comment.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

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[9] The Reserve Banks will identify and notify institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[10] Paper returns, FedLine Web returns, paper notifications of change (NOCs), and FedLine Web NOCS will only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by the Reserve Banks.

- Are consistent with the intent that was proposed in the NPRM (81 FR 18804, April 1, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 18804, April 1, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace LLC SA26 Series Service Bulletin (SB) 26–27–002, M7 Aerospace LLC SA226 Series SB 226–27–078, M7 Aerospace LLC SA227 Series SB 227–27–058, and M7 Aerospace LLC SA227 Series SB CC7–27–030, all dated October 8, 2015. The service information describes procedures for inspection of the cockpit control column horizontal tube for cracks and repair or replacement of the cockpit control column as necessary. All of the related service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

Costs of Compliance

We estimate that this AD affects 350 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	12 work-hours × $85 per hour = $1,020	Not applicable	$1,020	$357,000

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair cracks	2 work-hours × $85 per hour = $170	Not applicable	$170
Replace parts	16 work-hours × $85 per hour = $1,360	$5,000	6,360

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–15–02 M7 Aerospace LLC: Amendment 39–18593; Docket No. FAA–2016–5431; Directorate Identifier 2016–CE–044–AD.

(a) Effective Date

This AD is effective August 26, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2700, Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of multiple cracks in the steel horizontal tube of the cockpit control column. We are requiring repetitive inspections of the cockpit control column horizontal tube with repair or replacement, as necessary, of the cockpit control column. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with paragraphs (g)(1) through (2) of this AD using the following service bulletins within the compliance times specified below, unless already done:

(1) *For Models SA26–T and SA26–AT:* M7 Aerospace LLC Service Bulletin (SB) 26–27–002, dated October 8, 2015;

(2) *For Models SA226–AT, SA226–T, SA226–T(B), and SA226–TC:* M7 Aerospace LLC SB 226–27–078, dated October 8, 2015;

(3) *For Models SA227–AC(C–26A), SA227–AT, SA227–BC(C–26A), and SA227–TT:* M7 Aerospace LLC SB 227–27–058, dated October 8, 2015; or

(4) *For Models SA227–CC and SA227–DC (C–26B):* M7 Aerospace LLC SB CC7–27–030, dated October 8, 2015.

(g) Actions

(1) *For all airplanes:* Within the next 2,000 hours time-in-service (TIS) after [insert date 35 days after date of publication in the ***Federal Register***] (the effective date of this AD) or no later than when the airplane accumulates 20,000 hours TIS, whichever occurs later, do an initial inspection of the cockpit control column horizontal tube for cracks following the Accomplishment Instructions in section 2. of the service bulletins identified in paragraphs (f)(1), (2), (3), or (4) of this AD, as applicable; and repetitively inspect as follows:

(i) *For airplanes with less than 35,000 hours TIS as of [insert date 35 days after date of publication in the Federal Register] (the effective date of this AD):* Repetitively inspect the cockpit control column horizontal tube for cracks every 5,000 hours TIS until the airplane reaches 35,000 hours TIS at which time do the inspection within 2,000 hours TIS from the last inspection or within the next 100 hours TIS, whichever occurs later, and then thereafter at intervals not to exceed 2,000 hours TIS.

(ii) *For airplanes with 35,000 hours TIS or more as of [insert date 35 days after date of publication in the **Federal Register**] (the effective date of this AD):* Repetitively inspect the cockpit control column horizontal tube for cracks every 2,000 hours TIS.

(2) *For all airplanes:* If any cracks are found following the inspections required in paragraphs (g)(1), (g)(1)(i), or (ii), as applicable, before further flight, repair the control column following the Accomplishment Instructions in section 2. of the service bulletins identified in paragraphs (f)(1), (2), (3), or (4), as applicable, of this AD.

Note to paragraph (g)(1) through (2) of this AD: The reporting of information requested in paragraph 2.H. of the Accomplishment Instructions in the service bulletins identified in paragraphs (f)(1), (2), (3), and (4) of this AD is not a required action of this AD.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) M7 Aerospace LLC Service Bulletin (SB) 26–27–002, dated October 8, 2015;

(ii) M7 Aerospace LLC SB 226–27–078, dated October 8, 2015;

(iii) M7 Aerospace LLC SB 227–27–058, dated October 8, 2015; or

(iv) M7 Aerospace LLC SB CC7–27–030, dated October 8, 2015.

(3) For service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.*

(4) You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on July 13, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17039 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3993; Directorate Identifier 2015–NM–065–AD; Amendment 39–18592; AD 2016–15–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by reports of partial loss of no-back brake (NBB) efficiency on the trimmable horizontal stabilizer actuator (THSA). This AD requires an inspection to determine THSA part numbers, serial numbers, and flight cycles on certain THSAs; and repetitive replacement of certain THSAs. We are issuing this AD to prevent loss of THSA NBB efficiency, which, in conjunction with the inability of the power gear to keep the ball screw in its last commanded position, could lead to an uncommanded movement of the horizontal stabilizer, possibly resulting in loss of control of the airplane.

DATES: This AD is effective August 26, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 26, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3993.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3993; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The NPRM published in the **Federal Register** on March 7, 2016 (81 FR 11690) (“the NPRM”). The NPRM was prompted by reports of partial loss of NBB efficiency on the THSA. The NPRM proposed to require an inspection to determine THSA part numbers, serial numbers, and flight cycles on certain THSAs; and repetitive replacement for certain THSAs. We are issuing this AD to prevent loss of THSA NBB efficiency, which, in conjunction with the inability of the power gear to keep the ball screw in its last commanded position, could lead to an uncommanded movement of the horizontal stabilizer, possibly resulting in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0081, dated May 7, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on all Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The MCAI states:

> During endurance qualification tests on a Trimmable Horizontal Stabilizer Actuator (THSA) concerning another aeroplane type, a partial loss of the no-back brake (NBB) efficiency was experienced. Investigation results concluded that this partial loss of braking efficiency in some specific aerodynamic load conditions was due to polishing and auto-contamination of the NBB carbon friction disks.
>
> Due to design similarity on the A300–600, A300–600ST and A310 fleet, the same tests were initiated by the THSA manufacturer on certain type THSA, sampled from the field. Subject tests confirmed that THSA Part Number (P/N) 47142 series, as installed on the A300–600, A300–600ST and A310 fleet, are also affected by this partial loss of NBB efficiency.
>
> This condition, if not detected and corrected, and in conjunction with the power gear not able to keep the ball screw in its last commanded position, could potentially lead to an uncommanded movement of the Horizontal Stabilizer, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires the removal from service of each affected THSA, with the intent of in-shop NBB carbon disk replacement.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3993.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment.

Support for the NPRM

The Airline Pilots Association International stated that it fully supports the intent of the NPRM.

Requests To Revise Compliance Date

Airbus, FedEx Express, and United Parcel Service requested that we revise the compliance date in paragraph (j)(3) of the proposed AD from February 1, 2018, to February 1, 2019. The commenters stated that this revision would match the MCAI.

We agree with the commenters’ request. This was a typographical error. Our intent was to match the MCAI. We have revised paragraph (j)(3) of this AD accordingly.

Request To Allow Maintenance Records Review

FedEx Express requested that we allow a review of the operator’s maintenance records to determine the part number and serial number of the THSA specified in paragraph (h)(1) of the proposed AD. FedEx Express stated that this review would accomplish the same intent as a physical inspection of the THSA.

We agree with the commenter’s request. We have revised paragraph (h)(1) of this AD to allow doing a review of airplane maintenance records in lieu of the THSA inspection if the part number and serial number of the THSA can be conclusively determined from that review.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus Service Bulletin A300–27–6070, dated February 17, 2015; and Airbus Service Bulletin A310–27–2106, dated February 17, 2015. This service information describes procedures for inspection and replacement of the THSA.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 152 airplanes of U.S. registry.

We also estimate that it would take about 27 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $590,000 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $90,028,840, or $592,295 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–15–01 Airbus: Amendment 39–18592. Docket No. FAA–2016–3993; Directorate Identifier 2015–NM–065–AD.

(a) Effective Date

This AD is effective August 26, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(6) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Airbus Model A300 B4–605R and B4–622R airplanes.

(4) Airbus Model A300 F4–605R and F4–622R airplanes.

(5) Airbus Model A300 C4–605R Variant F airplanes.

(6) Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of partial loss of no-back brake (NBB) efficiency on the trimmable horizontal stabilizer actuator (THSA). We are issuing this AD to prevent loss of THSA NBB efficiency, which, in conjunction with the inability of the power gear to keep the ball screw in its last commanded position, could lead to an uncommanded movement of the horizontal stabilizer, possibly resulting in loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Affected THSAs

THSAs affected by the requirements of this AD have part numbers (P/Ns) 47142–403, 47142–413, 47142–414, and 47142–423.

Note 1 to paragraph (g) of this AD: FAA AD 2011–15–08, Amendment 39–16755 (76 FR 42029, July 18, 2011), requires installation of three secondary retention plates for the gimbal bearings on the THSA upper primary attachment, which involved a THSA part number change from the –300 series to the –400 series.

Note 2 to paragraph (g) of this AD: The life limits specified in Part 4 of the airworthiness limitations section are still relevant for the affected THSA. This AD addresses a replacement limit for the NBB disks installed on the THSA, not the life limit for the THSA itself.

(h) Inspection for Affected THSAs, Flight Cycles, and THSA Replacement

Before each date and before exceeding the corresponding THSA flight-cycle limits specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD; and before exceeding the flight-cycle limit corresponding to each date as specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, do the actions specified in paragraph (i) of this AD.

(1) Do an inspection of the THSA to determine the part number and serial number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the THSA can be conclusively determined from that review.

(2) Do an inspection of the airplane maintenance records to determine the flight cycles accumulated on each affected THSA since first installation on an airplane, or since last NBB replacement, whichever is later. If no maintenance records conclusively identifying the last NBB disk replacement are available, the flight cycles accumulated since first installation of the THSA on an airplane apply.

(i) THSA Replacement

By each date specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, for those affected THSAs having reached or exceeded the corresponding number of flight cycles specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, replace the THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–6070, dated February 17, 2015; or Airbus Service Bulletin A310–27–2106, dated February 17, 2015, as applicable.

(j) Compliance Dates and THSA Flight-Cycle Limits

Paragraphs (j)(1), (j)(2), and (j)(3) of this AD specify compliance dates and THSA flight-cycle limits for accomplishing the actions required by paragraphs (h) and (i) of this AD.

(1) *As of 30 days after the effective date of this AD:* The affected THSA flight-cycle limit is 30,000 flight cycles since first installation of the THSA on an airplane, or since last NBB replacement, whichever is later.

(2) *As of February 1, 2017:* The affected THSA flight-cycle limit is 20,000 flight cycles since first installation of the THSA on an airplane, or since last NBB replacement, whichever is later.

(3) As of February 1, 2019: The affected THSA flight-cycle limit is 14,600 flight cycles since first installation of the THSA on an airplane, or since last NBB replacement, whichever is later.

(k) Serviceable THSA Definition

For the purpose of this AD, a serviceable THSA is a unit identified in paragraph (k)(1) or (k)(2) of this AD.

(1) A THSA identified in paragraph (g) of this AD that, as of each date specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, has not exceeded the flight-cycle limits specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD since first installation of the THSA on an airplane, or since the last NBB disk replacement, whichever is later.

(2) A THSA with a different part number (*e.g.*, a THSA that is not identified in paragraph (g) of this AD) that is not affected by the requirements of this AD.

(l) THSA Replacements

As of each date and before exceeding the flight-cycle limit corresponding to each date specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD: Replace each affected THSA with a serviceable unit, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–6070, dated February 17, 2015; or Airbus Service Bulletin A310–27–2106, dated February 17, 2015.

(m) Parts Installation Limitation

Before each date specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, an operator may install an affected THSA on an airplane, provided that the unit has not exceeded the corresponding number of flight cycles specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, since first installation on an airplane, or since last NBB replacement, whichever is later.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0081, dated May 7, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3993.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A300–27–6070, dated February 17, 2015.

(ii) Airbus Service Bulletin A310–27–2106, dated February 17, 2015.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 11, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17014 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2014–0225; Amdt. No. 91–331C]

RIN 2120–AK78

Extension of the Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs); Technical Amendment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; technical amendment.

SUMMARY: On October 27, 2015, the Federal Aviation Administration (FAA) published a final rule extending the prohibition against certain flight operations in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) flight information regions (FIRs) by all United States (U.S.) air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The State Aviation Administration of Ukraine conducted and completed an airspace restructuring that altered the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Region (FIR) altitude structure specified in the final rule. To address the Ukraine airspace restructuring and provide additional clarity, this technical amendment specifically identifies the prohibited airspace in which Special Federal Aviation Regulation (SFAR) 113, applies, with inclusive altitudes and lateral limitations (latitude and longitude coordinates).

DATES: This final rule is effective on July 21, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; email: *michael.e.filippell@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that good cause exists under APA section 553(b)(3)(B) for this technical amendment to published without public notice and comment because this amendment is limited to providing additional clarity concerning specific airspace subject to the existing SFAR restriction, by adding latitude and longitude coordinates in lieu of the names for the FIRs.

In addition, section 553(d)(3) of the Administrative Procedure Act requires publication of a substantive rule must be made not less than 30 days before the effective date except when the agency finds good cause and publishes such justification with the rule.

Good cause exists under section 553(d)(3) of the APA for this technical amendment to become effective on the date of its filing for public inspection. Section 553(d)(3) allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). This rule merely provides additional clarity for the specific airspace subject to the existing restriction, by adding latitude and longitude coordinates in lieu of the names for the FIRs. In addition, the public interest is served by avoiding delay in the effective date of this technical amendment because clarity in the coverage of airspace subject to the rule is necessary to address the potential hazard to civil aviation that exists in the Simferopol (UKFV) and Dnepropetrovsk (UKDV) FIRs, as described in the FAA's final rule promulgating the SFAR. 80 FR 65621, 65622. For these reasons, the FAA finds good cause under APA section 553(d)(3) exists for this amendment to become effective on July 21, 2016.

II. Background

SFAR 113, § 91.1607, Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs) was published on December 29, 2014, and subsequently extended on October 27, 2015. As explained in the preamble accompanying the December 29, 2014 rule, the FAA first restricted flights over Simferopol (UKFV) by publishing the SFAR on April 25, 2014. On December 29, 2014, the FAA extended the scope of the airspace covered by the SFAR, based on increased safety concerns. The December 29, 2014, rule was extended on October 27, 2015. During this time period, the State Aviation Administration of Ukraine restructured the airspace. The new configuration altered both the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Region (FIR) altitude structures. In order to address the Ukraine airspace restructuring, this technical amendment specifically identifies the prohibited airspace in which SFAR 113, § 91.1607, applies, to provide inclusive altitudes and lateral limitations (latitude and longitude coordinates).

III. Technical Amendment

Consistent with the foregoing, the FAA clarifies the lateral limits of the prohibited airspace to include that area previously described as the Simferopol (UKFV) FIR, which is defined as:

465800N 0360000E–463500N 0364200E–
463424N 0372206E–452700N 0364100E–
452242N 0364100E–451824N 0363524E–
451442N 0363542E–451218N 0363200E–
450418N 0363418E–445612N 0363636E–
443100N 0364000E–424400N 0361600E–
424700N 0340000E–424800N 0320000E–
424800N 0310000E–424800N 0304500E–
434100N 0303200E–441000N 0302512E–
441500N 0302400E–444600N 0300900E–
445447N 0300448E–445230N 0302130E–
445848N 0303342E–451530N 0310642E–
452436N 0312500E–453828N 0315311E–
454436N 0320548E–455442N 0322700E–
460730N 0325430E–464600N 0325300E–
474400N 0330300E–472700N 0344800E–
470630N 0355500E–465800N 0360000E

The prohibited airspace within the above lateral limits extends in altitude from the surface to unlimited.

Additionally, prohibited airspace includes that area previously described as the Dnipropetrovsk (UKDV) FIR, which is defined as:

511400N 0342700E–504942N 0341300E–
502043N 0335720E–501246N 0335307E–
491848N 0333700E–485700N 0332200E–
484118N 0324431E–483620N 0324010E–
483128N 0323605E–482300N 0323900E–
480730N 0325324E–474600N 0325000E–
474400N 0330300E–472700N 0344800E–
470630N 0355500E–465800N 0360000E–
463500N 0364200E–463424N 0372206E–
463930N 0372518E–464700N 0373000E–
465900N 0382000E–470642N 0381324E–
then along state boundary until point/–
511400N 0342700E

The prohibited airspace within the above lateral limits extends in altitude from the surface to unlimited.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ukraine.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. In § 91.1607, revise paragraph (b) to read as follows:

§ 91.1607 Special Federal Aviation Regulation No. 113—Prohibition Against Certain Flights in the Simferopol (UKFV) and Dnipropetrovsk (UKDV) Flight Information Regions (FIRs).

* * * * *

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Simferopol (UKFV) FIR or the Dnipropetrovsk (UKDV) FIR.

(1)(i) The lateral limits of the prohibited airspace includes that area currently described as the Simferopol (UKFV) FIR, which is defined as:

465800N 0360000E–463500N 0364200E–
463424N 0372206E–452700N 0364100E–
452242N 0364100E–451824N 0363524E–
451442N 0363542E–451218N 0363200E–
450418N 0363418E–445612N 0363636E–
443100N 0364000E–424400N 0361600E–
424700N 0340000E–424800N 0320000E–
424800N 0310000E–424800N 0304500E–
434100N 0303200E–441000N 0302512E–
441500N 0302400E–444600N 0300900E–
445447N 0300448E–445230N 0302130E–
445848N 0303342E–451530N 0310642E–
452436N 0312500E–453828N 0315311E–
454436N 0320548E–455442N 0322700E–
460730N 0325430E–464600N 0325300E–
474400N 0330300E–472700N 0344800E–
470630N 0355500E–465800N 0360000E

(ii) The prohibited airspace within the lateral limits extends in altitude from the surface to unlimited.

(2)(i) The lateral limits of the prohibited airspace includes that area previously described as the Dnipropetrovsk (UKDV) FIR, which is defined as:

511400N 0342700E–504942N 0341300E–
502043N 0335720E–501246N 0335307E–
491848N 0333700E–485700N 0332200E–
484118N 0324431E–483620N 0324010E–
483128N 0323605E–482300N 0323900E–
480730N 0325324E–474600N 0325000E–
474400N 0330300E–472700N 0344800E–
470630N 0355500E–465800N 0360000E–
463500N 0364200E–463424N 0372206E–
463930N 0372518E–464700N 0373000E–
465900N 0382000E–470642N 0381324E–
then along state boundary until point/–
511400N 0342700

(ii) The prohibited airspace within the lateral limits extends in altitude from the surface to unlimited.

* * * * *

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on July 14, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

[FR Doc. 2016–17431 Filed 7–21–16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9776]

RIN 1545–BM74

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance regarding the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. These temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules. In addition, these temporary regulations provide rules regarding income inclusion upon a lease termination, lease disposition by a lessee, or disposition of a partner's or S corporation shareholder's entire interest in a lessee partnership or S corporation outside of the recapture period. Accordingly, these regulations will affect lessees of investment credit property when the lessor of such property makes an election to treat the lessee as having acquired the property and an investment credit is determined under section 46 with respect to such lessee. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES:

Effective Date: These regulations are effective on July 22, 2016.

Applicability Date: For date of applicability, see § 1.50–1T(f).

FOR FURTHER INFORMATION CONTACT: Jennifer A. Records, (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations amend the Income Tax Regulations (26 CFR part 1) under section 50(d)(5) to provide the income inclusion rules applicable to a lessee of investment credit property when a lessor elects to treat the lessee as having acquired such property. Section 50(d)(5) provides that, for purposes of the investment credit, rules similar to former section 48(d) (as in effect prior to the enactment of Revenue Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat 1388 (November 5, 1990))) apply.

Former section 48(d)(1) permitted a lessor of new section 38 property to elect to treat that property as having been acquired by the lessee for an amount equal to its fair market value (or, if the lessor and lessee were members of a controlled group of corporations, equal to the lessor's basis). Former section 48(d)(3) provided that if the lessor made the election provided in former section 48(d)(1) with respect to any such property, the lessee would be treated for all purposes of subpart E, part IV, subchapter A, Chapter 1, subtitle A, as having acquired such property. Section 50(a)(5)(A) replaced the term "section 38 property" with the term "investment credit property."

Under former section 48(q), if a credit was determined under section 46 with respect to section 38 property, the basis of the property was reduced by 50 percent of the amount of the credit determined (or 100 percent of the amount of the credit determined in the case of a credit for qualified rehabilitation expenditures). Former section 48(d)(5) provided specific rules coordinating the effect of the former section 48(d) election with the basis adjustment rules under former section 48(q). Because the lessee would have no basis in the property that the lessee was only deemed to have acquired pursuant to the election, former section 48(d)(5)(A) provided that the basis adjustment rules under former section 48(q) did not apply. Section 50(c) replaced former section 48(q) and provides the current basis adjustment rules.

In lieu of a basis adjustment, former section 48(d)(5)(B) provided that the lessee was required to include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to the property, an amount equal to 50 percent of the amount of the credit allowable under section 38 to the lessee with respect to such property. In the case of the rehabilitation credit, former section 48(q)(3) provided that former section 48(d)(5)(B) was to be applied without the phrase "50 percent of."

Former section 48(d)(5)(C) provided that, in the case of a disposition of property to which former section 47 (the former recapture rules) applied, the income inclusion rules of former section 48(d)(5) applied in accordance with regulations prescribed by the Secretary. Section 50(a) replaced former section 47 and provides the current recapture rules.

Explanation of Provisions

A. Scope

These temporary regulations provide the applicable rules that the Secretary has determined are similar to the rules of former section 48(d)(5). Thus, these temporary regulations are limited in scope to the income inclusion rules that apply when a lessor elects under § 1.48–4 of the Treasury Regulations to treat the lessee as having acquired investment credit property.

B. In General

Section 1.50–1T(b) provides the general rules for coordinating the basis adjustment rules under section 50(c) (the successor to former section 48(q)) with the rules under § 1.48–4 pursuant to which a lessor may elect to treat the lessee of investment credit property as having acquired such property for purposes of calculating the investment credit. Similar to the rule in former section 48(d)(5)(A), which provided that the basis adjustment rules under former section 48(q) did not apply when a § 1.48–4 election was made, § 1.50–1T(b)(1) provides that section 50(c) does not apply when the election is made. Thus, the lessor is not required to reduce its basis in the property by the amount of the investment credit determined under section 46 (or 50 percent of the amount of the credit in the case of the energy credit under section 48).

Under § 1.50–1T(b)(2), in lieu of a basis adjustment, and similar to the rule contained in former section 48(d)(5)(B), a lessee must include in gross income an amount equal to the amount of the credit (or, in the case of the section 48 energy credit, 50 percent of the amount of the credit) determined under section 46. Generally, the lessee includes such amount ratably over the shortest recovery period applicable under the accelerated cost recovery system provided in section 168, beginning on the date the investment credit property is placed in service and continuing on each one year anniversary date thereafter until the end of the applicable recovery period. The amount required to be included by the lessee is not subject to any limitations under section 38(c) on the amount of the credit allowed based on the amount of the lessee's income tax.

Because section 50(c) replaces the old basis adjustment rules under former section 48(q), the amount the lessee is required to include in gross income under these temporary regulations in

§ 1.50–1T(b)(2) corresponds to the current basis adjustment amounts required under section 50(c), rather than the former basis adjustment amounts provided in former section 48(q).

C. Special Rule for Partnerships and S Corporations

Section 1.50–1T(b)(3) provides that, in the case of a partnership (other than an electing large partnership) or an S corporation for which an election is made under § 1.48–4 to treat such entity as having acquired the investment credit property, each partner or S corporation shareholder that is the "ultimate credit claimant" is treated as the lessee for purposes of the income inclusion rules under § 1.50–1T(b)(2). The term *ultimate credit claimant* is defined in § 1.50–1T(b)(3)(ii) as any partner or S corporation shareholder that files (or that would file) Form 3468, "Investment Credit" (or its successor form), with such partner's or S corporation shareholder's income tax return to claim the investment credit determined under section 46 that results in the corresponding income inclusion under § 1.50–1T(b)(2). Each partner or S corporation shareholder that is the ultimate credit claimant must include in gross income the amount required under § 1.50–1T(b)(2) in proportion to the amount of the credit determined under section 46 (or 50 percent of the amount of the credit in the case of the energy credit under section 48) with respect to the partner or S corporation shareholder.

The Treasury Department and the IRS believe that, because the investment credit and any limitations on the credit itself are determined at the partner or S corporation shareholder level, it is appropriate that the income inclusion occurs at the partner or shareholder level. In the case of a partnership that actually owns the investment credit property, a partner in a partnership is treated as the taxpayer with respect to the partner's share of the basis of partnership investment credit property under § 1.46–3(f)(1) and separately computes the investment credit based on its share of the basis of the investment credit property. Similarly, in the case of a lessee partnership where the lessor makes an election under § 1.48–4 to treat the partnership as having acquired investment credit property, each partner in the lessee partnership is the taxpayer with respect to whom the investment credit is determined under section 46. Each partner in the lessee partnership will separately compute the investment credit based on each partner's share of the investment credit property. The credit is therefore computed at the partner level based on partner level limitations. Section 1.704–1(b)(4)(ii), which requires allocations with respect to the investment tax credit provided by section 38 to be made in accordance with the partners' interests in the partnership, provides that allocations of cost or qualified investment (as opposed to the investment credit itself, which is not determined at the partnership level) made in accordance with § 1.46–3(f) shall be deemed to be made in accordance with the partners' interests in the partnership.

Under similar principles, in the case of a lessor that makes an election under § 1.48–4 to treat an S corporation as having acquired investment credit property, each shareholder in the lessee S corporation is the taxpayer with respect to whom the investment credit is determined under section 46. The credit is therefore computed at the S corporation shareholder level based on shareholder level limitations.

The Treasury Department and the IRS believe that the burden of income inclusion should match the benefits of the allowable credit. Therefore, because the investment credit and any limitations on the credit are determined at the partner or shareholder level, these temporary regulations in § 1.50–1T(b)(3) provide that the gross income required to be ratably included under § 1.50–1T(b)(2) is not an item of partnership income for purposes of subchapter K or an item of S corporation income for purposes of subchapter S. Accordingly, the rules that would apply were such gross income an item of income under section 702 or section 1366, such as section 705(a) (providing for an increase in the partner's outside basis for items of income) or section 1367(a) (providing for an increase in the S corporation shareholder's stock basis for items of income) do not apply.

The Treasury Department and the IRS are aware that some partnerships and S corporations have taken the position that this income is includible by the partnership or S corporation and that their partners or S corporation shareholders are entitled to increase their bases in their partnership interests or S corporation stock as a result of the income inclusion. The Treasury Department and the IRS believe that such basis increases are inconsistent with Congressional intent as they thwart the purpose of the income inclusion requirement in former section 48(d)(5)(B) and confer an unintended benefit upon partners and S corporation shareholders of lessee partnerships and S corporations that is not available to any other credit claimant.

The investment credit rules operate to allow a taxpayer to claim the immediate benefit of the full amount of the allowable credit in exchange for the recoupment of that amount (or 50 percent of that amount in the case of the section 48 energy credit) over time. Where the taxpayer claiming the credit owns the investment credit property, the basis reduction provided in section 50(c) results in reduced cost recovery deductions over the life of the property or the realization of gain (or a reduction in the amount of loss realized) upon the disposition of the property. In the case of a lessor that elects under § 1.48–4 to treat the lessee of investment credit property as having acquired such property, § 1.50–1T(b)(2) instead requires the lessee to ratably include this amount in gross income over the life of the property.

If that lessee is a partnership or an S corporation, however, some partnerships and S corporations contend that this income inclusion is treated as an item of partnership or S corporation income that entitles their partners or S corporation shareholders to a corresponding basis increase under section 705(a) or section 1367(a). As a result of the basis increase, these partners or S corporation shareholders claim a loss (or reduce the amount of gain realized) upon the disposition of their partnership interests or S corporation shares.

As noted, the Treasury Department and the IRS have concluded that the income inclusion is not properly treated as an item of partnership income or of S corporation income. Nonetheless, had the Treasury Department and the IRS determined otherwise, the Treasury Department and the IRS believe that in addition to being inconsistent with the purpose of section 48(d)(5)(B), allowing a basis increase for the income inclusion would also be inconsistent with the purpose of sections 705 and 1367. The income to be included is a notional amount, which has no current or future economic effect on the basis of assets held by a partnership or S corporation. In general, Congress intended for sections 705 and 1367 to preserve inside and outside basis parity for partnerships and S corporations so as to prevent any unintended tax benefit or detriment to the partners or shareholders. See H.R. Rep. No. 1337, 83d Cong., 2d Sess. A225 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 384 (1954); H.R. Rep. No. 97–826, 97th Cong. 2d Sess. p. 17 (1982); S. Rep. No. 97–640, 97th Cong. 2d Sess. 16, 18 (1982); and Rev. Rul. 96–11 (1996–1 CB 140). Ultimately, the Treasury Department and the IRS have concluded that, under any approach, allowing partners and S corporation shareholders a basis increase to offset the income inclusion required by § 1.50–1T(b)(2) upon disposition of their partnership interests or S corporation shares is inappropriate, and that Congress did not intend to allow partners and S corporation shareholders the full benefit of the credit without any of the corresponding burden.

D. Coordination With the Recapture Rules

Section 1.50–1T(c) provides that if the investment credit recapture rules under section 50(a) are triggered (including if there is a lease termination), causing a recapture of the credit or a portion of the credit, an adjustment will be made to the lessee's (or, as applicable, the ultimate credit claimant's) gross income for any discrepancies between the total amount included in gross income under these temporary regulations in § 1.50–1T(b)(2) and the total credit allowable after recapture. The adjustment amount is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment credit property.

If the amount of the unrecaptured credit (that is, the allowable credit after taking into account the recapture amount), or 50 percent of the unrecaptured credit in the case of the energy credit, exceeds the amount previously included in gross income under § 1.50–1T(b)(2), the lessee's (or the ultimate credit claimant's) gross income is increased. The lessee (or the ultimate credit claimant) is required to include in gross income an amount equal to the excess of the amount of the credit that is not recaptured (or 50 percent of the amount of the credit that is not recaptured in the case of the energy credit) over the amount of the total increases in gross income previously made under § 1.50–1T(b)(2). This amount is in addition to the amounts previously included in gross income under § 1.50–1T(b)(2).

If the income inclusion prior to recapture under § 1.50–1T(b)(2) exceeds the unrecaptured credit (that is, the allowable credit after taking into account the recapture amount), or 50 percent of the unrecaptured credit in the case of the energy credit, the lessee's (or the ultimate credit claimant's) gross income is reduced. The lessee's or ultimate credit claimant's gross income is reduced by an amount equal to the excess of the total increases in gross income previously made under § 1.50–1T(b)(2) over the amount of the credit that is not recaptured (50 percent of the amount of the credit that is not recaptured in the case of the energy credit).

E. Election To Accelerate Income Inclusion Outside of the Recapture Period

Section 1.50–1T(d)(1) provides that a lessee or an ultimate credit claimant may make an irrevocable election to include in gross income any remaining income required to be taken into account under § 1.50–1T(b)(2) in the taxable year in which the lease terminates or is otherwise disposed of. Similarly, § 1.50–1T(d)(1) provides that if an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a partnership (other than an electing large partnership) or an S corporation, the ultimate credit claimant may make an irrevocable election to include in gross income any remaining income required to be taken into account under § 1.50–1T(b)(2) in the taxable year in which the ultimate credit claimant no longer owns a direct or indirect interest in the lessee of the investment credit property. The availability of this election allows a lessee or an ultimate credit claimant to account for any remaining required gross income inclusion in the taxable year in which it is exiting its investment.

This election is available only outside of the section 50(a) recapture period, and only if the lessee or the ultimate credit claimant was not already required to accelerate the gross income required to be included under § 1.50–1T(b)(2) because of a recapture event during the recapture period. Additionally, a former partner or S corporation shareholder that owns no direct or indirect interest in the lessee partnership or S corporation may not elect to accelerate the gross income required to be included under § 1.50–1T(b)(2) at the time of a termination or disposition of the lease by the lessee partnership or S corporation. The appropriate time for a former partner or S corporation shareholder that is an ultimate credit claimant to elect income acceleration is the taxable year that it disposes of its entire interest in a lessee partnership or S corporation.

Section 1.50–1T(d)(2) provides that the election to accelerate the income inclusion must be made by the due date (including any extension of time) of the lessee's return, or, in the case of a partnership or S corporation, by the due date (including any extension of time) of the ultimate credit claimant's return for the taxable year in which the relevant event occurs (for example, the lease termination, lease disposition, or disposition of the entire interest in the lessee partnership or S corporation). The election is made by including the remaining gross income required by these temporary regulations in the taxable year of the relevant event (for example, the lease termination, lease disposition, or disposition of the entire interest in the lessee partnership or S corporation).

F. Applicability Date

These temporary regulations apply with respect to investment credit property placed in service on or after the date that is 60 days after the date of filing of these regulations in the **Federal Register**. The temporary regulations should not be construed to create any inference concerning the proper interpretation of section 50(d)(5) prior to the effective date of the regulations.

G. Rev. Proc. 2014–12

Rev. Proc. 2014–12 (2014–3 IRB 415) establishes the requirements under which the IRS will not challenge partnership allocations of section 47 rehabilitation credits by a partnership to its partners. Section 3 states that Rev. Proc. 2014–12 does not address how a partnership is required to allocate the income inclusion required by section 50(d)(5). Furthermore, section 4.07 provides that, solely for purposes of determining whether a partnership meets the requirements of that section, the partnership's allocation to its partners of the income inclusion required by section 50(d)(5) shall not be taken into account.

Because § 1.704–1(b)(4)(ii) provides that allocations of cost or qualified investment, and not the investment credit itself (which is not determined at the partnership level), made in accordance with § 1.46–3(f) shall be deemed to be made in accordance with the partners' interests in a partnership, this Treasury decision modifies Rev. Proc. 2014–12 by changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2). Additionally, because § 1.50–1T(b)(3) provides that the gross income required to be included under section 50(d)(5) is not an item of partnership income to which the rules of subchapter K apply, this Treasury decision modifies Rev. Proc. 2014–12 by deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

Effect on Other Documents

Rev. Proc. 2014–12 (2014–3 IRB 415) is modified by: (1) Changing all references to allocations of section 47 rehabilitation credits to refer instead to allocations of qualified rehabilitation expenditures under section 47(c)(2); and (2) deleting the sentences in section 3 and section 4.07 that refer to allocation by a partnership of the income inclusion required under section 50(d)(5).

Statement of Availability of IRS Documents

Rev. Proc. 2014–12 (2014–3 IRB 415) is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Jennifer A. Records, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.50–1 is revised to read as follows:

§ 1.50–1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

(a) through (f) [Reserved]. For further guidance, see § 1.50–1T(a) through (f).

■ **Par. 3.** Section 1.50–1T is added to read as follows:

§ 1.50–1T Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer (temporary).

(a) *In general.* Section 50(d)(5) provides that, for purposes of computing the investment credit, rules similar to the rules of former section 48(d) (relating to certain leased property) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388 (November 5, 1990))) apply. This section provides rules similar to the rules of former section 48(d)(5) that the Secretary has determined shall apply for purposes of determining the inclusion in gross income required when a lessor elects to treat a lessee as having acquired investment credit property.

(b) *Coordination with basis adjustment rules.* In the case of any property with respect to which an election is made under § 1.48–4 by a lessor of investment credit property to treat the lessee as having acquired the property—

(1) *Basis adjustment.* Section 50(c) does not apply with respect to such property.

(2) *Amount of credit included ratably in gross income*—(i) *In general.* A lessee of the property must include ratably in gross income, over the shortest recovery period which could be applicable under section 168 with respect to that property, an amount equal to the amount of the credit determined under section 46 with respect to that property. The ratable income inclusion under this paragraph begins on the date the investment credit property is placed in service and continues on each one year anniversary date thereafter until the end of the applicable recovery period. The lessee will include in gross income the amount of its credit determined under section 46 regardless of limitations on the amount of the credit allowed under section 38(c) based on the amount of the lessee's income tax.

(ii) *Special rule for the energy credit.* In the case of any energy credit determined under section 48(a), paragraph (b)(2)(i) of this section applies only to the extent of 50 percent of the amount of the credit determined under section 46.

(3) *Special rule for partnerships and S corporations*—(i) *In general.* For purposes of paragraph (b)(2) of this section, if the lessee of the property is a partnership (other than an electing large partnership) or an S corporation, the gross income includible under such paragraph is not an item of partnership income to which the rules of subchapter K of Chapter 1, subtitle A of the Code apply or an item of S corporation income to which the rules of subchapter S of Chapter 1, subtitle A of the Code apply. Any partner or S corporation shareholder that is an ultimate credit claimant (as defined in paragraph (b)(3)(ii) of this section) is treated as a lessee that must include in gross income the amounts required under paragraph (b)(2) of this section in proportion to the credit determined under section 46 with respect to such partner or S corporation shareholder.

(ii) *Definition of ultimate credit claimant.* For purposes of this section, the term *ultimate credit claimant* means any partner or S corporation shareholder that files (or that would file) Form 3468, "Investment Credit", with such partner's or S corporation shareholder's income tax return to claim an investment credit determined under section 46 with respect to such partner or S corporation shareholder.

(c) *Coordination with the recapture rules*—(1) *In general.* If section 50(a) requires an increase in the lessee's or the ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under § 1.48–4, the lessee or the ultimate credit claimant is required to include in gross income an amount equal to the excess, if any, of the amount of the credit that is not recaptured over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property. Such amount is in addition to the amounts the lessee or the ultimate credit claimant previously included in gross income under paragraph (b)(2) of this section.

(2) *Income inclusion exceeds unrecaptured credit.* If section 50(a) requires an increase in the lessee's or ultimate credit claimant's tax or a reduction in the carryback or carryover of an unused credit (or both) as a result of an early disposition (including a lease termination), etc., of leased property for which an election had been made under § 1.48–4, the lessee's or the ultimate credit claimant's gross income shall be reduced by an amount equal to the excess, if any, of the total increases in

gross income previously included under paragraph (b)(2) of this section over the amount of the credit that is not recaptured.

(3) *Special rule for the energy credit.* In the case of any energy credit determined under section 48(a), paragraphs (c)(1) and (2) of this section apply by substituting the phrase "50 percent of the amount of the credit that is not recaptured" for the phrase "the amount of the credit that is not recaptured."

(4) *Timing of income inclusion or reduction following recapture.* Any adjustment required by paragraphs (c)(1) and (2) of this section is taken into account in the taxable year in which the property is disposed of or otherwise ceases to be investment credit property.

(d) *Election to accelerate income inclusion outside of the recapture period*—(1) *In general.* If after the recapture period described in section 50(a), but prior to the expiration of the recovery period described in paragraph (b)(2) of this section, there is a lease termination, the lessee otherwise disposes of the lease, or a partner or S corporation shareholder that is an ultimate credit claimant disposes of its entire interest, either direct or indirect, in a lessee partnership (other than an electing large partnership) or S corporation, the lessee, or, in the case of a partnership or S corporation, the ultimate credit claimant may irrevocably elect to take into account the remaining amount required to be included in gross income under this section in the taxable year of the disposition or termination.

(2) *Exceptions.* The election provided under paragraph (d)(1) of this section is not available to—

(i) Lessees or ultimate credit claimants required by paragraph (c) of this section to account for the remaining amount required to be included in gross income after accounting for recapture in the taxable year in which the property was disposed of or otherwise ceased to be investment credit property under section 50(a); or

(ii) Former partners or S corporation shareholders that own no interest, either direct or indirect, in a lessee partnership or S corporation at the time of a lease termination or disposition.

(3) *Manner and time for making election.* The election under paragraph (d)(1) of this section is made by including the remaining amount required to be included under this section in gross income in the taxable year of the lease termination or disposition or the disposition of the ultimate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation. The election must be made on or before the due date (including any extension of time) of the lessee's income tax return, or, in the case of a partnership or S corporation, the ultimate credit claimant's income tax return for the taxable year in which the lease termination or disposition or the disposition of the ultimate credit claimant's entire interest, either direct or indirect, in a partnership or S corporation occurs.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. X, a calendar year C corporation, leases nonresidential real property from Y. The property is placed in service on July 1, 2016. Y elects under § 1.48–4 to treat X as having acquired the property. X's investment credit determined under section 46 for 2016 with respect to such property is $9,750. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat X as having acquired the property, Y does not reduce its basis in the property under section 50(c). Instead, X, the lessee of the property, must include ratably in gross income over 39 years an amount equal to the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 39 years beginning with 2016 is $250 ($9,750/39 year recovery period).

Example 2. The facts are the same as in *Example 1* of this paragraph (e). except that instead of nonresidential real property, X leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. X's investment credit determined under section 46 for 2016 with respect to the property is $9,750. The shortest recovery period that could be available to the property under section 168 is 5 years. X, the lessee of the property, must include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property. Under paragraph (b)(2) of this section, X's increase in gross income for each of the 5 years beginning with 2016 is $975 ($4,875/5 year recovery period).

Example 3. A and B, calendar year taxpayers, form a partnership, the AB partnership, that leases nonresidential real property from Y. The property is placed in service on July 1, 2016. Y elects under § 1.48–4 to treat the AB partnership as having acquired the property. A's investment credit determined under section 46 for 2016 is $3,900 and B's investment credit determined under section 46 for 2016 is $7,800 with respect to the property. The shortest recovery period that could be available to the property under section 168 is 39 years. Because Y has elected to treat the AB partnership as having acquired the property, Y does not reduce its basis in the building under section 50(c). Instead, A and B, the ultimate credit claimants, must include the amount of the credit determined with respect to A and B under section 46 ratably in gross income over 39 years, the shortest recovery period available with respect to such property. Therefore, A and B must include ratably in gross income over 39 years under paragraph (b)(2) of this section an amount equal to $3,900 and $7,800, respectively. Under paragraph (b)(2) of this section, A's increase in gross income for each of the 39 years beginning with 2016 is $100 ($3,900/39 year recovery period) and B's is $200 ($7,800/39 year recovery period). Because the gross income A and B are required to include under paragraph (b)(2) of this section is not an item of partnership income, the rules under subchapter K applicable to items of partnership income do not apply with respect to such income. In particular, A and B are not entitled to an increase in the outside basis of their partnership interests under section 705(a) and are not entitled to an increase in their capital accounts under section 704(b).

Example 4. The facts are the same as in *Example 3* of this paragraph (e), except that on January 1, 2019, the lease between AB partnership and Y terminates (Y retains ownership of the property), which is a recapture event under section 50(a). A's and B's income tax for 2019 is increased under section 50(a) by $2,340 and $4,680, respectively (60% of $3,900 and $7,800, respectively, assuming that the aggregate decrease in the credits allowed under section 38 was the full amount of the investment credits determined as to A and B under section 46). Therefore, the amount of the unrecaptured credit as to A and B is $1,560 and $3,120, respectively (40% of $3,900 and $7,800, respectively). The amounts that A and B previously included in gross income under paragraph (b)(2) of this section are $300 ($100 for each of 2016, 2017, and 2018) and $600 ($200 for each of 2016, 2017, and 2018), respectively. A and B are required under paragraph (c)(1) of this section to include in gross income an amount equal to the excess of the credit that is not recaptured ($1,560 and $3,120, respectively) over the total increases in gross income previously made under paragraph (b)(2) of this section with respect to the property ($300 and $600, respectively). Therefore, A and B must include in gross income $1,260 and $2,520, respectively, in the taxable year of the lease termination (2019) in addition to the recapture amounts described above.

Example 5. (i) The facts are the same as in *Example 4* of this paragraph (e), except that instead of nonresidential real property, the AB partnership leases from Y solar energy equipment for which an energy credit under section 48 is determined under section 46. Because the shortest recovery period that could be available to the property under section 168 is 5 years, A and B are required under paragraph (b)(2)(ii) of this section to include ratably in gross income over 5 years an amount equal to 50% of the credit determined under section 46 with respect to such property (50% of $3,900/5, or $390, per year for A, and 50% of $7,800/5, or $780, per year for B).

(ii) The January 1, 2019 lease termination requires A's and B's income tax for 2019 to be increased under section 50(a) by $2,340 and $4,680, respectively (60% of $3,900 and $7,800, respectively). Therefore, the amount of the unrecaptured credit as to A and B is $1,560 and $3,120, respectively (40% of $3,900 and $7,800, respectively). Under paragraph (b)(2)(ii) of this section, the amounts A and B previously included in gross income are $1,170 ($390 for each of 2016, 2017, and 2018) and $2,340 ($780 for each of 2016, 2017, and 2018), respectively. A and B are entitled to a reduction in gross income under paragraph (c)(2) of this section equal to the excess of the total increases in gross income made under paragraph (b)(2)(ii) of this section ($1,170 and $2,340, respectively) over 50% of the amount of the credit that is not recaptured ($780 and $1,560, respectively). Therefore, A and B are entitled to a reduction in gross income in the amount of $390 and $780, respectively, in the taxable year of the lease termination (2019).

Example 6. (i) The facts are the same as in *Example 3* of this paragraph (e), except that on December 1, 2021, A sells its entire interest to C, and on January 1, 2022, the lease between AB partnership and Y terminates. At the time of the lease termination, B is still a partner in the AB partnership. There is no recapture event under section 50(a) because both the lease termination and the disposition of A's interest in the partnership occurred outside of the recapture period.

(ii) At the time that A sold its interest in the AB partnership to C, A had previously included $500 ($100 for each of 2016–2020) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, A must continue to include the remaining $3,400 (including $100 in 2021) in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, A may irrevocably elect to include the remaining $3,400 in gross income in the taxable year that A sold its entire interest in the AB partnership to C (2021). Pursuant to paragraph (d)(2) of this section, A cannot make this election in the taxable year of the lease termination (2022).

(iii) At the time of the lease termination, B had previously included $1,200 ($200 for each of 2016–2021) in gross income under paragraph (b)(2) of this section. Under paragraph (b)(2) of this section, B must continue to include the remaining $6,600 required in gross income ratably over the remaining portion of the applicable recovery period of 39 years. Alternatively, under paragraph (d)(1) of this section, B may irrevocably elect to include the remaining $6,600 in gross income in the taxable year of the lease termination (2022).

(f) *Applicability date.* This section applies to property placed in service on or after September 19, 2016.

(g) *Expiration date.* The applicability of this section will expire on or before July 19, 2019.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 1, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–16563 Filed 7–21–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS RAFAEL PERALTA (DDG 115) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 22, 2016 and is applicable beginning June 27, 2016.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS RAFAEL PERALTA (DDG 115) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Four, paragraph 15, adding, in alpha numerical order, by vessel number, an entry for USS RAFAEL PERALTA (DDG 115); and

■ b. In Table Five, by adding, in alpha numerical order, by vessel number, an entry for USS RAFAEL PERALTA (DDG 115).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

15. * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
*	*	*
USS RAFAEL PERALTA	DDG 115	1.88
*	*	*

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS RAFAEL PERALTA	DDG 115	X	X	X	14.5
*	*	*	*	*	*

Approved: June 27, 2016.

C.J. Spain,

Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law), Acting.

Dated: July 12, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–17028 Filed 7–21–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS LITTLE ROCK (LCS 9) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 22, 2016 and is applicable beginning July 6, 2016.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS LITTLE ROCK (LCS 9) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2(a)(i), pertaining to the height of the forward masthead light above the hull; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead light. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table One, adding, in alpha numerical order, by vessel number, an entry for USS LITTLE ROCK (LCS 9); and

■ b. In Table Five, adding, in alpha numerical order, by vessel number, an entry for USS LITTLE ROCK (LCS 9).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * *	* *	* *
USS LITTLE ROCK	LCS 9	6.0
* * *	* *	* *

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward mast-head light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*		*	*
USS LITTLE ROCK	LCS 9		X	X	23
* * *	*	*		*	*

Approved: July 6, 2016.

C.J. Spain,

Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law), Acting.

Dated: July 12, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–17351 Filed 7–21–16; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0306; A–1–FRL–9949–32–Region 1]

Air Plan Approval; RI; Correction, Administrative and Miscellaneous Revisions

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This SIP revision includes fifteen revised Rhode Island Air Pollution Control Regulations. These regulations have been previously approved into the Rhode Island SIP and the revisions to these regulations currently being approved are mainly administrative in nature, but also include technical corrections and a few substantive changes to several of the rules. In addition, EPA is promulgating a correction to the Rhode Island SIP to remove Rhode Island's odor regulation because it was previously erroneously approved into the SIP. The intended effect of this action is to approve Rhode Island's fifteen revised regulations into the Rhode Island SIP and to correct the Rhode Island SIP by removing Rhode Island's odor regulation. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective September 20, 2016, unless EPA receives adverse comments by August 22, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0306 at *http://www.regulations.gov,* or via email to *mcdonnell.ida@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone 617–918–1656, fax 617–918–0656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Correction to Rhode Island's SIP
III. Rhode Island's SIP Revision
IV. EPA's Evaluation of Rhode Island's SIP Revision
V. Final Action
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. Background and Purpose

On September 22, 2008, the Rhode Island Department of Environmental Management (RI DEM) submitted a SIP revision to EPA. This SIP revision includes fifteen revised Rhode Island Air Pollution Control Regulations, with the revisions mainly being administrative in nature, but several rules also included technical corrections and four rules included additional changes. In addition, in a letter dated May 24, 2016, Rhode Island requested that EPA remove Rhode Island's Air Pollution Control Regulation No. 17 "Odors" from the existing SIP, a revision to which was initially included in Rhode Island's September 22, 2008 SIP submittal. Also, on March 25, 2015, Rhode Island submitted a separate SIP revision with revised versions of three regulations that were part of the September 22, 2008 SIP submittal. These three revisions consisted of minor technical corrections. In a letter dated May 25, 2016, Rhode Island submitted another letter, withdrawing from its SIP revision several provisions of the fifteen regulations included in the original September 22, 2008 SIP submittal.[1]

Rhode Island's new "Air Pollution Control General Definitions Regulation" was also included in the September 22, 2008 SIP revision. However, an updated version of that regulation (effective in the state of Rhode Island on September 29, 2010) was subsequently submitted by RI DEM on March 25, 2011, and was approved by EPA on March 1, 2012. *See* 77 FR 14691.

In addition, by letters dated June 27, 2014, March 28, 2016, and May 24, 2016, Rhode Island withdrew seventeen of the regulations originally included in the September 22, 2008 SIP submittal. Consequently, we are taking action only on the following revised regulations from Rhode Island's September 22, 2008 submittal: Rhode Island's Air Pollution Control (APC) Regulation No. 1 "Visible Emissions," No. 3 "Particulate Emissions from Industrial Processes," No. 4 "Open Fires," No. 6 "Continuous Emissions Monitors," No. 7 "Emissions of Air Contaminants Detrimental to Person or Property," No. 12 "Incinerators," No. 14 "Record Keeping and Reporting," No. 15 "Control of Organic Solvent Emissions," No. 19 "Control of Volatile Organic Compounds from Surface Coating Operations," No. 21 "Control of Volatile Organic Compounds from Printing Operations," No. 26 "Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products," No. 27 "Control of Nitrogen Oxide Emissions," No. 30 "Control of Volatile Organic Compounds from Automobile Refinishing Operations," No. 32 "Control of Volatile Organic Compounds from Marine Vessel Loading Operations," and No. 35 "Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations." All of these regulations were effective in the State of Rhode Island on July 19, 2007.

See section II of this document for details about the correction to Rhode Island's SIP to remove the odor regulation. See section III for details about the rule changes we are taking action on, which were contained in Rhode Island's September 22, 2008 SIP revision. See section IV for a summary of EPA's evaluation of the State's amended September 22, 2008 SIP submittal. Please note that if EPA receives adverse comment(s) on a particular amendment, paragraph, or section of Rhode Island's SIP revision and if that amendment, paragraph, or section is severable from the remainder of the regulation in question, EPA may adopt as final those provisions of the regulation that are not the subject of the adverse comment(s).

II. Correction to Rhode Island's SIP

A revision to APC Regulation No. 17 "Odors" was initially included in Rhode Island's September 22, 2008 SIP submittal. However, in a letter dated May 24, 2016, Rhode Island withdrew that revision from its SIP submittal and also requested that EPA remove Rhode Island's already existing Air Pollution Control Regulation No. 17 "Odors" from the SIP. EPA has determined that Rhode Island's Air Pollution Control Regulation No. 17 "Odors," which was originally approved into the SIP in 1981, does not have reasonable connection to the National Ambient Air Quality Standards (NAAQS) and related air quality goals of the Clean Air Act and thus is not properly part of the SIP. Consequently, pursuant to CAA section 110(k)(6), EPA is correcting the erroneous approval of Rhode Island's odor regulation into the SIP. Section 110(k)(6) of the CAA provides that "[w]henever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public." It should be noted that Section 110(k)(6) has been used by EPA to delete improperly approved odor provisions from the Wyoming SIP and the New York SIP. *See* 61 FR 47058 and 63 FR 65557.

III. Rhode Island's SIP Revision

For ten of the fifteen regulations included in Rhode Island's amended September 22, 2008 SIP submittal, Rhode Island removed common definitions from each of those individual regulations and recodified them in Rhode Island's Air Pollution Control General Definitions Regulation. As noted above, the "Air Pollution Control General Definitions Regulation" with those added definitions was approved into the SIP on March 1, 2012. In addition, for all of the fifteen regulations included in Rhode Island's amended September 22, 2008 SIP submittal, Rhode Island added General Provisions to each of the regulations. These General Provisions state the purpose of the rule, cite the authority pursuant to which the regulations were promulgated, and provide the effective date of the regulation.

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[1] In a letter dated May 25, 2016, Rhode Island submitted revised versions of each of these regulations to withdraw certain provisions from the September 22, 2008 SIP submittal. Rhode Island withdrew "director discretion" provisions from Rhode Island APC Regulation No. 3 and No. 12, and air toxics provisions from Rhode Island APC Regulation No. 7. Rhode Island also withdrew the "Application" section from the General Provisions of all fifteen regulations. In addition, the September 22, 2008 SIP submittal did not include "halogenated organic compound" applicability provisions in APC Regulation No. 15, No. 19, No. 21, No. 26, No. 30, No. 32, and No. 35.

On March 25, 2015, Rhode Island amended the September 22, 2008 SIP submittal by submitting revised versions of Air Pollution Control Regulations No. 15, No. 26, and No. 32, including minor technical corrections. Rhode Island's APC Regulation No. 15 was revised to correct the numbering of subsections 15.4.10(g) and (h) and was revised to correct the references to these sections in subsections 15.2.4(b) and 15.2.5(b). Rhode Island's APC Regulation No. 26 was revised in subsection 26.6.2 to correct a cross reference to another subsection. Rhode Island's APC Regulation No. 32 was revised to correct a typographical error in subsection 32.1.1 and to correct the symbol for degrees in subsection 32.4.3(f).

In addition to the changes noted above, in the amended September 22, 2008 SIP submittal, the following eight regulations added a Table of Contents in each regulation: Rhode Island's APC Regulation No. 15, No. 19, No. 21, No. 26, No. 27, No. 30, No. 32, and No. 35. Furthermore, APC Regulation No. 4, No. 7, No. 12, and No. 14 included additional changes. The following discussion provides a summary of the changes to these four regulations.

Rhode Island's APC Regulation No. 4 "Open Fires" was approved into the SIP in 1981. *See* 46 FR 25446. The currently approved standard prohibits burning of any material in an open fire at a solid waste management facility or in connection with any salvage, industrial, commercial or institutional operation. Rhode Island added a definition for hazardous waste disposal facility to mean real and personal property acquired, constructed or operated for the purpose of the disposal of hazardous waste, and added an explicit prohibition for open burning at hazardous wastes disposal facilities. In addition, Rhode Island added a provision allowing the RI DEM Air Director to approve open burning of solid or liquid fuels or structures for the purpose of instruction and training of municipal, volunteer and industrial firefighters in the method of fighting fires when conducted under the direct control and supervision of qualified instructors. The rule also added a provision allowing the Director to approve the combustion of material if no alternative means of disposal is available, and so long as the burning is conducted during periods of good ventilation, without causing a nuisance, and using smoke minimizing starters if smoke starters are used. Alternative disposal methods may include chipping, cutting for forest products, landfilling, piling for protective cover for wildlife and others. EPA concluded that sufficient, concrete bounds and conditions were placed on the Director's ability to approve alternative means of combusting material, such that the Director's discretion in this particular instance is approvable under the CAA.

Rhode Island's Air Pollution Control Regulation No. 7 "Emissions of Air Contaminants Detrimental to Person or Property" was approved into the SIP in 1981. *See* 46 FR 25446. The standard prohibits emissions of any contaminant that may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property. Rhode Island's APC Regulation No. 7 was revised to include criteria for determining compliance with the standard for new sources or modifications. In the issuance of any approval under Rhode Island's APC Regulation No. 9 "Air Pollution Control Permits" the criteria for determining compliance with regard to the APC Regulation No. 7 standards will be based on compliance with the primary and secondary NAAQS.

Rhode Island's Air Pollution Control Regulation No. 12 "Incinerators" was approved into the SIP in 1982. *See* 47 FR 17816. Rhode Island's APC Regulation No. 12 was amended to exclude new hospital, medical, and infectious waste incinerators subject to sections 39.3–39.10 of Rhode Island's APC Regulation No. 39. Rhode Island's APC Regulation No. 39 was approved by EPA as part of a State Plan required by sections 111(d) and 129 of the Clean Air Act. *See* 66 FR 21092.

Rhode Island's APC Regulation No. 14, Recordkeeping and Reporting, was approved into the SIP in 1999. *See* 64 FR 67495. Rhode Island's APC Regulation No. 14 was revised to require emission statements to be submitted by April 15 of each year instead of "within 45 days of the end of the calendar year."

IV. EPA's Evaluation of Rhode Island's SIP Revision

We have reviewed the regulations included in Rhode Island's amended September 22, 2008 SIP submittal and have found that all of the regulations currently pending before EPA from that submittal had previously been approved into the Rhode Island SIP (without the revisions included in the amended September 22, 2008 submission).[2] The changes to Rhode Island's APC Regulation No. 4 "Open Fires" to allow open burning for the instruction and training of firefighters or where there are no alternatives to open burning available, are practical and properly limited exceptions to the general prohibition against open fires. Rhode Island's APC Regulation No. 7 "Emissions of Air Contaminants Detrimental to Person or Property" was strengthened by adding criteria for determining compliance with the standard for new and modified sources. Rhode Island's APC Regulation No. 12 "Incinerators" now excludes incinerators more appropriately regulated by Rhode Island's APC Regulation No. 39 as part of an EPA approved State Plan under sections 111(d) and 129 of the Clean Air Act. Lastly, the change to the date for submissions in Rhode Island's APC Regulation No. 14 "Record Keeping and Reporting" is minor in nature and has no bearing on air quality. As described above, the revisions to the majority of those regulations submitted as part of the amended September 22, 2008 submittal are primarily administrative in nature and also include certain minor technical corrections, as well as a few substantive changes we find acceptable to several of the rules. Therefore, EPA is approving the revised regulations into the Rhode Island SIP.

V. Final Action

EPA is removing Rhode Island's APC Regulation No. 17 "Odors" from the approved Rhode Island SIP pursuant to Section 110(k)(6) of the Act. In addition, EPA is approving, and incorporating into the Rhode Island SIP, the following revised Rhode Island Air Pollution Control Regulations, effective in the state of Rhode Island on July 19, 2007:

No. 1 "Visible Emissions" (except section 1.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision)

No. 3 "Particulate Emissions from Industrial Processes" (except section 3.4.3 of the General Provisions and the "director discretion" provisions in section 3.3(a), which were formally withdrawn from consideration as part of the SIP revision)

No. 4 "Open Fires" (except section 4.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision)

No. 6 "Continuous Emissions Monitors" (except section 6.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision)

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[2] It should be noted that the only newly adopted regulation included in Rhode Island's September 22, 2008 SIP submittal was the "General Definitions" regulation. An updated version of that regulation was approved by EPA on March 13, 2012. *See* 77 FR 14691. Therefore, the definitions regulation was one of the rules that Rhode Island withdrew in its March 28, 2016 letter.

No. 7 "Emissions of Air Contaminants Detrimental to Person or Property" (except section 7.5.3 of the General Provisions and the air toxics provisions in sections 7.4.1(b), (c), and (d), which were formally withdrawn from consideration as part of the SIP revision)

No. 12 "Incinerators" (except section 12.8.3 of the General Provisions and the "director discretion" provisions in sections 12.5(a) and (c), which were formally withdrawn from consideration as part of the SIP revision)

No. 14 "Record Keeping and Reporting" (except section 14.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision)

No. 15 "Control of Organic Solvent Emissions" (except section 15.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 15.2.2 which was not submitted as part of the SIP revision)

No. 19 "Control of Volatile Organic Compounds from Surface Coating Operations" (except section 19.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 19.2.2 which was not submitted as part of the SIP revision)

No. 21 "Control of Volatile Organic Compounds from Printing Operations" (except section 21.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 21.2.3 which was not submitted as part of the SIP revision)

No. 26 "Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products" (except section 26.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 26.2.3 which was not submitted as part of the SIP revision)

No. 27 "Control of Nitrogen Oxide Emissions" (except section 27.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision)

No. 30 "Control of Volatile Organic Compounds from Automobile Refinishing Operations" (except section 30.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 30.2.2 which was not submitted as part of the SIP revision)

No. 32 "Control of Volatile Organic Compounds from Marine Vessel Loading Operations" (except section 32.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 32.2.2 which was not submitted as part of the SIP revision)

No. 35 "Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations" (except section 35.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 35.2.3 which was not submitted as part of the SIP revision)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 20, 2016 without further notice unless the Agency receives relevant adverse comments by August 22, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 20, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Rhode Island's Air Pollution Control Regulations No. 1 "Visible Emissions" (except section 1.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision), No. 3 "Particulate Emissions from Industrial Processes" (except section 3.4.3 of the General Provisions and the "director discretion" provisions in section 3.3(a), which were formally withdrawn from consideration as part of the SIP revision), No. 4 "Open Fires" (except section 4.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision), No. 6 "Continuous Emissions Monitors" (except section 6.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision), No. 7 "Emissions of Air Contaminants Detrimental to Person or Property" (except section 7.5.3 of the General Provisions and the air toxics provisions in sections 7.4.1(b), (c), and (d), which were formally withdrawn from consideration as part of the SIP revision), No. 12 "Incinerators" (except section 12.8.3 of the General Provisions and the "director discretion" provisions in sections 12.5(a) and (c), which were formally withdrawn from consideration as part of the SIP revision), No. 14 "Record Keeping and Reporting" (except section 14.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision), No. 15 "Control of Organic Solvent Emissions" (except section 15.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 15.2.2 which was not submitted as part of the SIP revision), No. 19 "Control of Volatile Organic Compounds from Surface Coating Operations" (except section 19.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 19.2.2 which was not submitted as part of the SIP revision), No. 21 "Control of Volatile Organic Compounds from Printing Operations" (except section 21.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 21.2.3 which was not submitted as part of the SIP revision), No. 26 "Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products" (except section 26.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 26.2.3 which was not submitted as part of the SIP revision), No. 27 "Control of Nitrogen Oxide Emissions" (except section 27.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision), No. 30 "Control of Volatile Organic Compounds from Automobile Refinishing Operations" (except section 30.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 30.2.2 which was not submitted as part of the SIP revision), No. 32 "Control of Volatile Organic Compounds from Marine Vessel Loading Operations" (except section 32.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 32.2.2 which was not submitted as part of the SIP revision), and No. 35 "Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations" (except section 35.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 35.2.3 which was not submitted as part of the SIP revision), described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov.*

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. In § 52.2070, paragraph (c), the table is amended by removing the entry for state citation Air Pollution Control Regulation 17; and by revising entries to state citations for Air Pollution Control Regulations 1, 3, 4, 6, 7, 12, 14, 15, 19, 21, 26, 27, 30, 32, and 35 to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	* * *
Air Pollution Control Regulation 1.	Visible Emissions ...	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 1 is approved with the exception of section 1.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 3.	Particulate Emissions from Industrial Processes.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 3 is approved with the exception of section 3.4.3 of the General Provisions and the “director discretion” provisions in section 3.3(a), which were formally withdrawn from consideration as part of the SIP revision.
Air Pollution Control Regulation 4.	Open Fires	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 4 is approved with the exception of section 4.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 6.	Continuous Emission Monitors.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 6 is approved with the exception of section 6.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision.
Air Pollution Control Regulation 7.	Emission of Air Contaminants Detrimental to Persons or Property.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 7 is approved with the exception of section 7.5.3 of the General Provisions and the air toxics provisions in sections 7.4.1(b), (c), and (d), which were formally withdrawn from consideration as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 12.	Incinerators	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 12 is approved with the exception of section 12.8.3 of the General Provisions and the “director discretion” provisions in sections 12.5(a) and (c), which were formally withdrawn from consideration as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 14.	Recordkeeping and Reporting.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 14 is approved with the exception of section 14.4.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision.
Air Pollution Control Regulation 15.	Control of Organic Solvent Emissions.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 15 is approved with the exception of section 15.5.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 15.2.2 which was not submitted as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 19 is approved with the exception of section 19.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 19.2.2 which was not submitted as part of the SIP revision.
Air Pollution Control Regulation 21.	Control of Volatile Organic Compounds from Printing Operations.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 21 is approved with the exception of section 21.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 21.2.3 which was not submitted as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 26.	Control of Organic Solvent Emissions from Manufacturers of Synthesized Pharmaceutical Products.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 26 is approved with the exception of section 26.8.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 26.2.3 which was not submitted as part of the SIP revision.
Air Pollution Control Regulation 27.	Control of Nitrogen Oxide Emissions.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 27 is approved with the exception of section 27.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision.

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	* * *
Air Pollution Control Regulation 30.	Control of Volatile Organic Compounds from Automobile Refinishing Operations.	7/19/2007	....	All of Air Pollution Control Regulation 30 is approved with the exception of section 30.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 30.2.2 which was not submitted as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 32.	Control of Volatile Organic Compounds from Marine Vessel Loading Operations.	7/19/2007	....	All of Air Pollution Control Regulation 32 is approved with the exception of section 32.7.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 32.2.2 which was not submitted as part of the SIP revision.
*	*	*	*	* * *
Air Pollution Control Regulation 35.	Control of Volatile Organic Compounds and Volatile Hazardous Air Pollutants from Wood Product Manufacturing Operations.	7/19/2007	7/22/2016 [Insert **Federal Register** citation].	All of Air Pollution Control Regulation 35 is approved with the exception of section 35.9.3 of the General Provisions which was formally withdrawn from consideration as part of the SIP revision, and section 35.2.3 which was not submitted as part of the SIP revision.
*	*	*	*	* * *

[FR Doc. 2016–17184 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 170

Health Information Technology Standards, Implementation Specifications, and Certification Criteria and Certification Programs for Health Information Technology

CFR Correction

■ In Title 45 of the Code of Federal Regulations, Parts 1 to 199, revised as of October 1, 2015, on page 1235, in § 170.102, add, in alphabetical order, the definition "*Day or Days* means a calendar day or calendar days."

[FR Doc. 2016–17365 Filed 7–21–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 381, 383, 390, 391, 392, 393, 395, and 396

[Docket No. FMCSA–2016–0091]

RIN 2126–AB89

Amendments To Implement Certain Provisions of the Fixing America's Surface Transportation Act or "FAST Act"

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts, as final, certain regulations required by the Fixing America's Surface Transportation Act (FAST Act) enacted on December 4, 2015. The statutory changes went into effect on October 1, 2015, retroactively, and require that FMCSA make conforming changes to its regulations to ensure they are current and consistent with the statutory requirements. Adoption of these rules is a nondiscretionary, ministerial action that FMCSA may take without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the good cause exception available to Federal agencies under the Administrative Procedure Act (APA).

DATES: This final rule is effective July 22, 2016. Petitions for Reconsideration must be received by the Agency no later than August 22, 2016.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kathryn Sinniger, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; by telephone at (202) 493–0908, or by electronic mail at *kathryn.sinniger@dot.gov.* If you have questions regarding the docket, call Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Summary of the Major Provisions

This rule makes nondiscretionary, ministerial changes to FMCSA regulations that are required by the FAST Act (Pub. L. 114–94, 129 Stat. 1312, December 4, 2015). The FAST Act made several notable changes to the authorities implemented by requirements in the Code of Federal Regulations (CFR). For example, it exempts welding trucks used in the construction and maintenance of pipelines from FMCSA's regulations. It excepts drivers of ready-mixed concrete trucks and hi-rail vehicles, as well as drivers of commercial motor vehicles (CMVs) transporting livestock and bees, from some of the hours of service (HOS) requirements in 49 CFR part 395. It also extends the length of the time (from 2 years to 5 years) that an exemption or renewal of an exemption may provide relief from the regulations.

A full explanation of all changes made in this rule is included below in section III. Fast Act Provisions Implemented by this Rulemaking. A copy of the FAST Act has been placed in the docket for this rulemaking for reference.

B. Benefits and Costs

The economic impact of this rule's provisions, considered both individually and in the aggregate, does not rise to the level of economic significance, and a cost-benefit analysis is therefore not required.

II. Legal Basis for the Rulemaking

A. FAST Act

This rule is based on the FAST Act. Certain provisions of the FAST Act made mandatory, non-discretionary changes to FMCSA programs. The majority of these statutory changes went into effect on October 1, 2015, while others will go into effect on October 1, 2016.[1] This rule makes only those changes that went into effect on October 1, 2015, that can be implemented without prior notice and opportunity for comment as addressed in section II(B) below. Publication of today's rule triggers the 3-year period during which the States are required to adopt compatible provisions under FMCSA's Motor Carrier Safety Assistance Program (MCSAP). 49 CFR 350.331(d), 350.335(b), and part 355, appendix A.

At a later date, before October 1, 2016, the Agency will issue another final rule to implement additional ministerial requirements that will become effective on October 1, 2016.[2] The Agency also expects that there will be rulemakings required to address additional provisions of the FAST Act, where Congress either provided the Agency with some discretion regarding implementation, or specifically required that notice and comment rulemaking procedures be followed.

It is necessary to make conforming changes to ensure that FMCSA's regulations are current and consistent with the applicable statutes. The provisions implemented in this final rule are from the following sections of the FAST Act, which impacted Title 49, United States Code (U.S.C.):

1. Section 5206 Applications.
2. Section 5507 Electronic Logging Device Requirements.
3. Section 5518 Covered Farm Vehicles.
4. Section 5519 Operators of Hi-Rail Vehicles.
5. Section 5521 Ready Mix Concrete Delivery Vehicles.
6. Section 5522 Transportation of Construction Materials and Equipment.
7. Section 5524 Exemptions from Requirements for Certain Welding Trucks Used in Pipeline Industry.
8. Section 7208 Hazardous Materials Endorsement Exemption.

FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR 1.87.

B. Administrative Procedure Act

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA [5 U.S.C. 553(b) and (c)]. Section 553(b)(3)(B) allows an exception from these requirements when notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest." FMCSA finds that prior notice and an opportunity for comment are unnecessary because the changes adopted in this final rule are statutorily mandated, and the Agency is performing a nondiscretionary, ministerial act. For these same reasons, the rule will be effective upon publication, as these statutory changes went into effect on October 1, 2015 [5 U.S.C. 553(d)].

C. FAST Act Waiver of Advance Notice of Proposed Rulemaking/Negotiated Rulemaking

FMCSA is aware of the regulatory reform requirements imposed by section 5202 of the FAST Act concerning public participation in rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules, but because this final rule is not major, they are not applicable. In any event, the Agency finds that, for the reasons stated below, publication of an advance notice of proposed rulemaking under 49 U.S.C. 31136(g)(1)(A), or a negotiated rulemaking under 49 U.S.C. 31136(g)(1)(B), is unnecessary and contrary to the public interest in accordance with the waiver provision in 49 U.S.C. 31136(g)(3).

III. Fast Act Provisions Implemented by This Rulemaking

This section describes those portions of the FAST Act that require FMCSA to make conforming changes to the regulations, which are also listed here. These regulatory changes are non-discretionary; in other words, the FAST Act provided all of the necessary content of the regulations. As noted in the executive summary, there are additional regulatory changes that will be required by the FAST Act, but those either have a later effective date, will require FMCSA to exercise some degree of discretion, or are required to be subject to notice and comment.

FMCSA has included here a table of affected CFR sections, which will cross-reference corresponding requirements of the FAST Act. This table will make it easier for the reader to move back and forth between the revised regulations and the corresponding section(s) of the FAST Act.

TABLE OF CFR SECTIONS AFFECTED

CFR section	FAST Act section
365.101(j) (new)	5524 [129 Stat. 1312, 1560].
381.300(b)	5206(a)(3) [129 Stat. 1312, 1537].
381.317 (new)	5206(a)(3) [129 Stat. 1312, 1537].
383.3(i) (new)	7208 [129 Stat. 1312, 1593].
390.38 (new)	5524 [129 Stat. 1312, 1560].
390.39(b)(1)	5518 [129 Stat. 1312, 1558].
391.2(e) (new)	5524 [129 Stat. 1312, 1560].
392.1(b) (new)	5524 [129 Stat. 1312, 1560].

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[1] *See* FAST Act section 1003 (establishing October 1, 2015, as the effective date for all provisions in Division A of the Act, covering Surface Transportation) (Pub. L. 114–94, 129 Stat. 1312, 1322, December 4, 2015) and section 5101 (establishing October 1, 2016 as the effective for the changes made in that section) (Pub. L. 114–94, 129 Stat. 1312, 1514, December 4, 2015).

[2] See FAST Act section 5101 (Pub. L. 114–94, 129 Stat. 1312, 1514, December 4, 2015), which includes the amendments that become effective on October 1, 2016.

TABLE OF CFR SECTIONS AFFECTED—Continued

CFR section	FAST Act section
393.1(e) (new)	5524 [129 Stat. 1312, 1560].
395.1(e)	5521 [129 Stat. 1312, 1559].
395.1(t) (new)	5206(b)(1)(A) [129 Stat. 1312, 1537].
395.1(u) (new)	5206(b)(1)(B) [129 Stat. 1312, 1537].
395.1(v) (new)	5206(b)(1)(C) [129 Stat. 1312, 1537].
395.1(w) (new)	5519 [129 Stat. 1312, 1558].
395.1(x) (new)	5524 [129 Stat. 1312, 1560].
395.2	5206(b)(1)(A), 5206(b)(1)(C), 5519, 5522 [129 Stat. 1312, 1537, 1558,1559].
395.8	5507 [129 Stat. 1312, 1553].
396.1(d) (new)	5524 [129 Stat. 1312, 1560].

Section 5206 Applications

Previously, 49 U.S.C. 31315(b) allowed an exemption from a regulation for no longer than 2 years from its approval date, and allowed an exemption to be renewed upon application to the Secretary for subsequent periods of no more than 2 years. Section 5206(a)(3) of the FAST Act amends section 31315(b) to allow an exemption to be granted for no longer than 5 years and to be renewed, upon request, for subsequent periods no longer than 5 years, if the Secretary finds that such an exemption would likely achieve an equivalent, or greater, level of safety. This rulemaking changes § 381.300(b) to allow exemptions for up to 5 years that may be renewed for subsequent periods of up to 5 years.

Section 5206(a)(3) of the FAST Act also added subsection (b)(3) to 49 U.S.C. 31315 to permit an applicant whose application for exemption has been denied to resubmit the application addressing the reason for denial. FMCSA adds a new § 381.317 describing this process.

Section 5206(b)(1) of the FAST Act made permanent three existing exemptions from the 30-minute rest break requirements in § 395.3(a)(3)(ii). The first was granted to the National Ready Mixed Concrete Association (80 FR 17819, April 2, 2015). In this rulemaking, FMCSA adds new § 395.1(t) allowing a driver of a ready-mixed concrete delivery vehicle to use time spent waiting with the vehicle at a job site or terminal to meet the requirement for a 30-minute rest break. The driver may not perform any other work during this time waiting. FMCSA also adds a definition of "ready mix concrete delivery vehicle" to § 395.2, to reflect the definition in related section 5521 of the FAST Act, Ready Mix Concrete Delivery Vehicles, which is discussed below.

The second exemption, also from the requirements in § 395.3(a)(3)(ii), was granted to the California Farm Bureau Federation (80 FR 35425, June 19, 2015). In this rule, FMCSA adds new § 395.1(u) that provides that the 30-minute rest break requirements do not apply to a driver transporting bees in interstate commerce if there are bees on the vehicle.

The third exemption from the 30-minute rest break was granted to the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (80 FR 33584, June 12, 2015). In this rulemaking, FMCSA implements this requirement of the Act by adding new § 395.1(v) that provides that the 30-minute rest break requirements do not apply to a driver transporting livestock while the livestock are on the vehicle. FMCSA also adds a definition of livestock to § 395.2, to reflect the classification in the regulatory exemption developed in response to the AFTC petition.

Section 5507 Electronic Logging Device Requirements

Section 5507 of the FAST Act amends 49 U.S.C. 31137(b) to provide an exception for motor carriers transporting a motor home or recreation vehicle trailer in a driveaway-towaway operation, as defined in 49 CFR 390.5. Under this provision, a motor carrier could comply with the HOS requirements by using either a paper record of duty status form or an electronic logging device. FMCSA changes § 395.8(a)(1)(iii)(A) by adding this new exception.

Section 5518 Covered Farm Vehicles

Previously, section 32934(b)(1) of the Moving Ahead for Progress for the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, 830, July 6, 2012; 49 U.S.C. 31136 note) provided that Federal transportation funding to a State could not be terminated, limited, or interfered with because the State exempts a covered farm vehicle, including its operator, from "any State requirement relating to the operation of that vehicle." The term "covered farm vehicle" is defined in section 32924(c) of MAP–21. Section 5518 of the FAST Act amends section 32934(b)(1) of MAP–21 to specify that the requirements are those in section 32934(a) or any other minimum standard provided by a State relating to the operation of that vehicle. The specific requirements outlined in section 32934(a) of MAP–21 exempt a covered farm vehicle and its driver from any requirement relating to (1) operating with a commercial driver's license (CDL) or drug and alcohol testing established under 49 U.S.C. chapter 313; (2) medical certificates established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 313; and (3) HOS and vehicle inspection, repair, and maintenance established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 315. The Agency revises § 390.39(b)(1) to reflect these changes, which should clarify which exemptions found in State laws for covered farm vehicles may not be taken into consideration during Federal grants management.

Section 5519 Operators of Hi-Rail Vehicles

For the CMV driver of a hi-rail vehicle who is subject to the HOS regulations in 49 CFR part 395, section 5519 of the FAST Act provides that the maximum on-duty time under § 395.3 shall not include certain time in transportation to or from a duty assignment. Time in transportation, to or from a duty assignment, will not be included in the 14 hours on-duty time under § 395.3(a)(2) if (1) it does not exceed 2 hours per calendar day or a total of 30 hours per calendar month, and (2) the motor carrier fully and accurately accounts for this time in the records it maintains and makes such records available to FMCSA or the Federal Railroad Administration upon request. Section 5519(b) defines "hi-rail vehicle" as "an internal rail flaw detection vehicle equipped with flange hi-rails."

FMCSA adds a new paragraph (w) to § 395.1 to reflect this exception. In addition, FMCSA adds a definition of hi-rail vehicle to § 395.2.

Section 5521 Ready Mix Concrete Delivery Vehicles

Section 5521 of the FAST Act amends 49 U.S.C. 31502 by adding a new subsection (f) that exempts drivers of ready-mixed concrete delivery vehicles from keeping records of duty status under certain circumstances. The driver of the ready-mixed concrete delivery vehicle must (1) operate within a 100-mile radius of the normal work reporting location; (2) return to the work reporting location and be released from work within 14 consecutive hours; (3) have at least 10 hours off duty following each 14 hours on duty; and (4) not exceed 11 hours of driving time following 10 consecutive hours off duty. The motor carrier that employs the driver must keep accurate time records. This change essentially allows the driver of a ready-mixed concrete truck to use the short-haul exception in § 395.1(e)(1), but with a 14-hour on-duty period. Section 5521 also adds a definition of "driver of a ready mixed concrete delivery vehicle."

FMCSA revises § 395.1(e)(1) to reflect new 49 U.S.C. 31502(f)(1). The Agency also adds a new definition of "ready-mixed concrete delivery vehicle" to § 395.2. "Driver" is already defined in § 390.5.

Section 5522 Transportation of Construction Materials and Equipment

Section 5522 of the FAST Act amends section 229(e)(4) of the Motor Carrier Safety Improvement Act of 1999, as transferred and amended (49 U.S.C. 31136 note), which is the definition of transportation of construction materials and equipment. That definition provided that, for a driver who transports construction materials and equipment within a 50 air mile radius of the normal work reporting location of the driver, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. The FAST Act increases this to a 75 air mile radius. The Act also allows a State to establish a different air mile radius limitation if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. FMCSA changes the definition of transportation of construction materials and equipment in § 395.2 to conform to this change.

Section 5524 Exemptions From Requirements for Certain Welding Trucks Used in Pipeline Industry

Section 5524 of the FAST Act defines a welding truck used in the pipeline industry as a pick-up style truck, owned by a welder, equipped with a welding rig that is used in the construction or maintenance of pipelines, and that has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less. Section 5524 exempts the operator of such a vehicle and the operator's employer from any requirement relating to: (1) Registration as a motor carrier, including obtaining and displaying a U.S. Department of Transportation (DOT) number (49 U.S.C. chapters 139 and 311); (2) driver qualifications (49 U.S.C. chapter 311); (3) driving a CMV (49 U.S.C. chapter 311); (4) parts and accessories and inspection, repair, and maintenance of CMVs (49 U.S.C. chapter 311); and HOS of drivers, including maximum driving and on duty time (49 U.S.C. chapter 315). To reflect this section of the FAST Act, FMCSA adds new § 390.38 that excepts welding trucks, equipped with a welding rig used in the construction and maintenance of pipelines, from the requirements in 49 CFR parts 365, 390, 391, 392, 393, 395, and 396. The new § 390.38 also defines "pipeline welding trucks" to conform to the FAST Act.

The Agency also adds specific exemptions in each of the parts listed in new § 390.38, to ensure that the exemption is clear. These new exemptions are found at: §§ 365.101(j) (exemption from requirement to apply for operating authority in part 365); 391.2 (e) (exemption from minimum qualifications for CMV drivers in part 391); 392.1 (b) (exemption from CMV operating rules in part 392); 393.1(e) (exemption from parts and accessories requirements in part 393); 395.1(x) (exemption from the HOS rules in part 395); and 396.1(d) (exemption from inspection, repair, and maintenance requirements in part 396).

Section 7208 Hazardous Materials Endorsement Exemption

Section 7208 of the FAST Act provides that the Secretary allow a State, at its discretion, to waive the requirement for a holder of a Class A CDL to obtain a hazardous materials endorsement to transport 1,000 gallons or less of diesel fuel. A State may waive the requirement if the license holder is (1) acting within the scope of the license holder's employment as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and (2) is operating a service vehicle that is transporting diesel in a quantity of 3,785 liters (1,000 gallons) or less and that is clearly marked with a "flammable" or "combustible" placard, as appropriate. FMCSA adds a new paragraph (i) to § 383.3 to reflect this exemption. Note that if a State exercises this discretion, a driver may still be required to obtain a hazardous materials endorsement if they travel to a State that has not opted to waive the requirement.

IV. This Final Rule

This rule adopts as final certain regulations required by the FAST Act. These statutory changes went into effect retroactively on October 1, 2015. Because adoption of these rules is a nondiscretionary, ministerial action, FMCSA did not issue an NPRM or receive public comment.

V. Section-by-Section Analysis

A. Part 365

In § 365.101, paragraph (j) is added to exempt pipeline welding trucks from the rules of part 365.

B. Part 381

In § 381.300, paragraph (b) is revised, changing the timeframe from 2 years to 5 years.

Section 381.317 is added to allow an application for exemption to be resubmitted if it has been denied.

C. Part 383

In § 383.3, a new paragraph (i) is added to provide that a State may waive the requirement that a driver obtain a hazardous materials endorsement to transport diesel fuel under certain circumstances.

D. Part 390

FMCSA adds new § 390.38 to exempt pipeline welding trucks from certain requirements of the FMCSRs. Paragraph (a) describes those parts of the FMCSRs from which the pipeline welding truck is exempt. Paragraph (b) provides a definition of "pipeline welding truck."

In § 390.39, paragraph (b)(1) is revised to reflect changes in the statutes concerning exemptions found in State laws for covered farm vehicles.

E. Part 391

In § 391.2, paragraph (e) is added to exempt drivers of pipeline welding trucks from the rules of part 391.

F. Part 392

In § 392.1, the existing text is designated as paragraph (a), and a paragraph (b) is added to exempt drivers of pipeline welding trucks from the rules of part 392.

G. Part 393

In § 393.1, paragraph (e) is added to exempt pipeline welding trucks from the rules of part 393.

H. Part 395

FMCSA makes a number of changes to § 395.1 to exempt certain operations from aspects of the hours of service rules. Paragraph (e)(1) is changed to provide that drivers of ready-mixed concrete delivery vehicles who are on duty for 14 consecutive hours may be exempt from the requirements of § 395.8.

Section 395.1(t) is added to allow the driver of a ready-mixed concrete delivery vehicle to use 30-minutes or more of time spent waiting with the vehicle to meet the requirement for the 30-minute rest break in § 395.3(a)(3)(ii). Paragraphs (u) and (v) are added to exempt drivers engaged in the interstate transportation of bees or livestock, respectively, from the requirement for a 30-minute rest break. FMCSA adds paragraph (w) to provide that on-duty time for the driver of a hi-rail vehicle does not include time in transportation to or from a duty assignment under certain circumstances. Paragraph (x) exempts drivers of pipeline welding trucks from the rules of part 395.

The definitions in § 395.2 are changed to conform to the changes in the statutes. FMCSA adds definitions of "hi-rail vehicle," "livestock," and "ready-mixed concrete delivery vehicle." FMCSA changes the definition of "transportation of construction material and equipment" to increase the air mile radius to the normal work reporting location. The definition is also changed to allow the States to establish a different air mile radius limitation upon notice to the Administrator.

Section 395.8(a) is changed to allow a motor carrier to require the driver transporting a motor home or recreation vehicle trailer, in a driveaway-towaway operation, to record his or her records of duty status manually.

I. Part 396

In § 396.1, paragraph (d) is added to exempt pipeline welding trucks from the rules of part 396.

VI. Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). As explained above, this final rule is strictly ministerial in that it incorporates nondiscretionary statutory requirements. These statutory changes went into effect retroactively on October 1, 2015. The regulatory changes included in this rule are necessary to make FMCSA's regulations consistent with the FAST Act and their economic impact will not exceed the $100 million annual threshold. Any costs associated with this action are attributable to the non-discretionary statutory provisions. This final rule is not expected to generate substantial congressional or public interest. Therefore, a full regulatory impact analysis has not been conducted nor has there been a review by the Office of Management and Budget (OMB).

Although a full regulatory evaluation is unnecessary because of the low economic impact of this rulemaking, FMCSA analyzed the cost impact of the FAST Act provisions implemented by this final rule. This rule's provisions generally provided exemptions to FMCSA regulations and should ease the economic burden on regulated entities. The impacts of these provisions should be small and affect a small number of individuals and businesses.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Kathryn Sinniger, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $155 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), nor does it revise any existing approved collections of information.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of

E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action does not pose an environmental or safety risk that could disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII), therefore the Agency finds that there will be no impact on the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a "significant energy action" under that E.O. because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

E.O. 13175 (Indian Tribal Governments)

This final rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FMCSA's *NEPA Implementing Procedures and Policy for Considering Environmental Impacts,* Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." *Id.* at chapter 1(D). Because Congress specifies the Agency's precise action here, thus leaving the Agency no discretion over such action, and since the Agency lacks jurisdiction and therefore control and responsibility over the effects of this action, this rulemaking falls under chapter 1(D). Therefore, no further analysis is considered.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401, *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action is expected to fall within the CAA *de minimis* standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Additionally, FMCSA evaluated the effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a "disproportionate" and "high and adverse impact" on minority or low-income populations. This final rule is exempt from analysis under the National Environmental Policy Act. This final rule simply makes ministerial, mandatory changes and would not result in high and adverse environmental impacts.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor Carriers, Moving of household goods.

49 CFR Part 381

Motor carriers.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor Carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in this preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 2. Amend § 365.101 by adding paragraph (j) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(j) The rules in this part do not apply to "pipeline welding trucks" as defined in 49 CFR 390.38(b).

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 3. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

■ 4. Amend § 381.300 by revising paragraph (b) to read as follows:

§ 381.300 What is an exemption?

* * * * *

(b) An exemption provides the person or class of persons with relief from the regulations for up to 5 years, and may be renewed, upon request, for subsequent 5-year periods.

* * * * *

■ 5. Add § 381.317 to read as follows:

§ 381.317 May I resubmit my application for exemption if it is denied?

If the Administrator denies your application for exemption and you can reasonably address the reasons for denial, you may resubmit your application following the procedures in § 381.310.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 6. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 7208 of Pub. L. 114–94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

■ 7. Amend § 383.3 by adding paragraph (i) to read as follows:

§ 383.3 Applicability.

* * * * *

(i) *Hazardous materials endorsement exemption for certain drivers transporting diesel.* A State may waive the requirement for a holder of a Class A commercial driver's license to obtain a hazardous materials endorsement under this part, if the license holder is:

(1) Acting within the scope of the license holder's employment, and within the State of domicile (or another State with a hazardous materials endorsement exemption) as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and

(2) Operating a service vehicle that is:

(i) Transporting diesel in a quantity of 3,785 liters (1,000 gallons) or less; and

(ii) Clearly marked with a "flammable" or "combustible" placard, as appropriate.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 8. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; sec. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; sec. 5403(d), 5518, 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; and 49 CFR 1.81, 1.81a and 1.87.

■ 9. Add § 390.38 to read as follows:

§ 390.38 Exemptions for pipeline welding trucks.

(a) *Federal requirements.* A pipeline welding truck, as defined in paragraph (b) of this section, including the individuals operating such vehicle and the employer of such individual, is exempt from the following:

(1) Any requirement relating to registration as a motor carrier, including the requirement to obtain and display a Department of Transportation number, in 49 CFR part 365 or 390.

(2) Any requirement relating to driver qualifications in 49 CFR part 391.

(3) Any requirement relating to driving of commercial motor vehicles in 49 CFR part 392.

(4) Any requirement relating to parts and accessories and inspection, repair, and maintenance of commercial motor vehicles in 49 CFR parts 393 and 396.

(5) Any requirement relating to hours of service of drivers, including maximum driving and on duty time, found in 49 CFR part 395.

(b) *Definition.* "Pipeline welding truck" means a motor vehicle that is travelling in the State in which the vehicle is registered or another State, is owned by a welder, is a pick-up style truck, is equipped with a welding rig that is used in the construction or maintenance of pipelines, and has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less.

■ 10. Amend § 390.39 by revising paragraph (b)(1) to read as follows:

§ 390.39 Exemptions for "covered farm vehicles."

* * * * *

(b) *State requirements*—(1) *In general.* Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from—

(i) A requirement described in paragraph (a) of this section; or

(ii) Any other minimum standard provided by a State relating to the operation of that vehicle.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 11. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 12. Revise § 391.2 by adding paragraph (e) to read as follows:

§ 391.2 General exceptions.

* * * * *

(e) *Pipeline welding trucks.* The rules in this part do not apply to drivers of "pipeline welding trucks" as defined in 49 CFR 390.38(b).

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 13. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 14. Revise § 392.1 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 392.1 Scope of the rules in this part.

* * * * *

(b) The rules in this part do not apply to drivers of "pipeline welding trucks" as defined in 49 CFR 390.38(b).

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 15. The authority citation for part 393 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 16. Revise § 393.1 by adding paragraph (e) to read as follows:

§ 393.1 Scope of the rules in this part.

* * * * *

(e) The rules in this part do not apply to "pipeline welding trucks" as defined in 49 CFR 390.38(b).

PART 395—HOURS OF SERVICE OF DRIVERS

■ 17. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5206(b) of Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 18. Amend § 395.1 by revising paragraph (e)(1) and adding paragraphs (t), (u), (v), (w), and (x), to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(e) *Short-haul operations*—(1) *100 air-mile radius driver.* A driver is exempt from the requirements of § 395.8 if:

(i) The driver operates within a 100 air-mile radius of the normal work reporting location;

(ii)(A) The driver, except a driver-salesperson or a driver of a ready-mixed concrete delivery vehicle, returns to the work reporting location and is released from work within 12 consecutive hours;

(B) The driver of a ready-mixed concrete delivery vehicle returns to the work reporting location and is released from work within 14 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver, except the driver of a ready-mixed concrete delivery vehicle, has at least 10 consecutive hours off duty separating each 12 hours on duty;

(B) A driver of a ready-mixed concrete delivery vehicle has at least 10 consecutive hours off duty separating each 14 hours on duty;

(C) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;

(iv)(A) A property-carrying commercial motor vehicle driver, except the driver of a ready-mixed concrete delivery vehicle, does not exceed the maximum driving time specified in § 395.3(a)(3) following 10 consecutive hours off duty; or

(B) A driver of a ready-mixed concrete delivery vehicle does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or

(C) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

* * * * *

(t) *Ready-mixed concrete delivery vehicle.* A driver of a ready-mixed concrete delivery vehicle subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30-minutes or more of time spent while waiting with the commercial motor vehicle at a job site or terminal to meet the requirement for the 30-minute rest break, providing the driver performs no other work during the break.

(u) *Transport of commercial bees.* The provisions of § 395.3(a)(3)(ii), requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of bees by commercial motor vehicle as long as the bees are on the vehicle.

(v) *Transport of livestock.* The provisions of § 395.3(a)(3)(ii), requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of livestock by commercial motor vehicle while the livestock are on the vehicle.

(w) *Hi-rail vehicles.* For the driver of a hi-rail vehicle, the maximum on duty time under § 395.3 shall not include time in transportation to or from a duty assignment if such time in transportation—

(1) Does not exceed 2 hours per calendar day or a total of 30 hours per calendar month; and

(2) Is fully and accurately accounted for in records to be maintained by the motor carrier and such records are made available upon request of the Federal Motor Carrier Safety Administration or the Federal Railroad Administration.

(x) *Pipeline welding trucks.* The rules in this part do not apply to drivers of "pipeline welding trucks," as defined in 49 CFR 390.38(b).

■ 19. Amend § 395.2 by revising the first sentence in the definition of "Transportation of construction materials and equipment" and by adding definitions of "Hi-rail vehicle," "Livestock," and "Ready-mixed concrete delivery vehicle," in alphabetical order, to read as follows:

§ 395.2 Definitions.

* * * * *

Hi-rail vehicle means an internal rail flaw detection vehicle equipped with flange hi-rails.

Livestock means cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the Emergency Livestock Feed Assistance Act of 1988, as amended.

* * * * *

Ready-mixed concrete delivery vehicle means a vehicle designed to deliver ready-mixed concrete on a daily basis and equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

* * * * *

Transportation of construction material and equipment means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a 75 air mile radius of the normal work reporting location of the driver, except that a State, upon notice to the Administrator, may establish a different air mile radius limitation for purposes of this definition if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. * * *

* * * * *

■ 20. Amend § 395.8 by revising paragraph (a)(1)(iii)(A) to read as follows.

§ 395.8 Driver's record of duty status.

(a)(1) * * *

(iii)(A) A motor carrier may require a driver to record the driver's duty status manually in accordance with this section, rather than require the use of an ELD, if the driver is operating a commercial motor vehicle:

(*1*) In a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period;

(*2*) In a driveaway-towaway operation in which the vehicle being driven is part of the shipment being delivered;

(3) In a driveaway-towaway operation in which the vehicle being transported is a motor home or a recreation vehicle trailer; or

(*4*) That was manufactured before model year 2000.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 21. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 22. Revise § 396.1 by adding paragraph (d) to read as follows:

§ 396.1 Scope.

* * * * *

(d) The rules in this part do not apply to "pipeline welding trucks" as defined in 49 CFR 390.38(b).

Issued under the authority of delegation in 49 CFR 1.87: July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17114 Filed 7–21–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 393 and 396 and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA–2015–0176]

RIN 2126–AB81

Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) in response to several petitions for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) and the American Trucking Associations (ATA), and two safety recommendations from the National Transportation Safety Board (NTSB). Specifically, the Agency adds a definition of "major tread groove" and an illustration to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove; revises the rear license plate lamp requirement to eliminate the requirement for an operable rear license plate lamp on vehicles when there is no rear license plate present; amends the regulations regarding tires to prohibit the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; provides specific requirements regarding when violations or defects noted on an inspection report must be corrected; amends two appendixes to the FMCSRs to include provisions for the inspection of antilock braking systems (ABS) and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; amends the periodic inspection rules to eliminate the option for a motor carrier to satisfy the annual inspection requirement through a violation–free roadside inspection; and amends the inspector qualification requirements as a result of the amendments to the periodic inspection rules. In addition, the Agency eliminates introductory regulatory text from an appendix to the FMCSRs because the discussion of the differences between the North American Standard Inspection out-of-service criteria and FMCSA's periodic inspection criteria is unnecessary.

DATES: The rule is effective July 22, 2016.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than August 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202–366–5370; *michael.huntley@dot.gov.*

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2015–0176 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT accepts comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Executive Summary

FMCSA is responsible for regulations to ensure that all commercial motor vehicles (CMVs) are systematically inspected, repaired, and maintained and that all parts and accessories necessary for the safe operation of CMVs are in safe and proper operating condition at all times. In response to several petitions for rulemaking from CVSA and ATA and two safety recommendations from the NTSB, FMCSA amends various provisions in parts 393 and 396 of the FMCSRs. The amendments generally do not involve the establishment of new or more stringent requirements, but instead clarify existing requirements to increase consistency of enforcement activities, and therefore the economic impact of these changes is negligible.

Specifically, the Agency (1) adds a definition of "major tread groove" in § 393.5 and an illustration in § 393.75 to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove; (2) revises the rear license plate lamp requirement to eliminate the requirement in Table 1 of § 393.11 for vehicles to have an operable rear license plate lamp when there is no rear license plate present; (3) amends the regulations regarding tires to prohibit the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; (4) clarifies § 396.9 regarding when violations or defects noted on a roadside inspection report need to be corrected; (5) amends Appendix G to the FMCSRs, "Minimum Periodic Inspection Standards," to include provisions for the inspection of ABS and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; (6) amends § 396.17(f) and removes § 396.23(a) to eliminate the option for a motor carrier to meet the periodic inspection requirements through roadside inspections; and (7) amends § 396.19(b) regarding inspector qualifications as a result of the amendments to § 396.17(f) described above. In addition, the Agency eliminates as unnecessary a portion of Appendix G to the FMCSRs that describes the differences between the out-of-service criteria and FMCSA's annual inspection requirement. Elsewhere in today's issue of the **Federal Register**, FMCSA amends certain regulatory guidance to ensure consistency between the FMCSRs, as amended by this final rule, and the published guidance.

III. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 [1935 Act] and the Motor Carrier Safety Act of 1984 [1984 Act].

The 1935 Act, as amended, provides that "[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a private motor carrier, when needed to promote safety of operation" (49 U.S.C. 31502(b)).

This final rule amends the FMCSRs in response to several petitions for rulemaking. The adoption and enforcement of such rules is specifically authorized by the 1935 Act. This rulemaking rests squarely on that authority.

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to "prescribe regulations on commercial motor vehicle safety." The regulations shall prescribe minimum safety standards for CMVs. At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) drivers are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a vehicle in violation of a regulation promulgated under 49 U.S.C. 31136 or 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)).

This final rule concerns (1) parts and accessories necessary for the safe operation of CMVs, and (2) the inspection, repair, and maintenance of CMVs. It is based primarily on section 31136(a)(1) and (2), and secondarily on section 31136(a)(4). This rulemaking ensures that CMVs are maintained, equipped, loaded, and operated safely by requiring certain vehicle components, systems, and equipment to meet minimum standards such that the mechanical condition of the vehicle is not likely to cause a crash or breakdown. Section 31136(a)(3) is not applicable because this rulemaking does not deal with driver qualification standards. Because the amendments are primarily technical changes that clarify existing requirements and improve enforcement consistency, FMCSA believes they will be welcomed by motor carriers and drivers alike and that coercion to violate them will not be an issue.

Before prescribing any such regulations, FMCSA must consider the "costs and benefits" of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)). As discussed in greater detail in the "Regulatory Analyses" section, FMCSA determined that this final rule is not a significant regulatory action. The economic impact is negligible because the amendments generally do not involve the adoption of new or more stringent requirements, but rather the clarification of existing requirements. As such, the costs of the final rule do not approach the $100 million annual threshold for economic significance.

IV. Background

On October 7, 2015, FMCSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** titled Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments (80 FR 60592). FMCSA received 16 comments on the NPRM.

V. Summary of the NPRM

FMCSA proposed to amend § 393.5 to define "major tread groove" as "The space between two adjacent tread ribs or lugs on a tire that contains a tread wear indicator or wear bar. (In most cases, the locations of tread wear indicators are designated on the upper sidewall/shoulder of the tire on original tread tires.)" In addition, FMCSA proposed adding an illustration to § 393.75 to indicate the location of tread wear indicators or wear bars signifying a major tread groove. FMCSA agreed that uniformity and consistency in enforcement and maintenance is critical. By including a definition of "major tread groove" in § 393.5—a term that is currently included in the regulatory text of § 393.75(b) and (c), but not specifically defined—and a corresponding illustration in § 393.75, the Agency expects increased consistency in the application and citation of § 393.75 during roadside inspections.

FMCSA proposed to amend Footnote 11 to Table 1 of § 393.11 to indicate that "No rear license plate lamp is required on truck tractors registered in States that do not require tractors to display a rear license plate." As noted in both the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) No. 108 and the FMCSRs, the only function of the rear license plate lamp is to illuminate the rear license plate. FMCSA agreed with ATA that if a truck tractor is not required to display a rear license plate, then there is no corresponding safety need for a functioning rear license plate light.

FMCSA proposed to amend Appendix G to include a review of ABS and automatic brake adjusters and brake adjustment indicators to maintain consistency between part 393 and Appendix G. FMCSA agreed that the failure of a motor carrier to properly maintain an important safety technology such as ABS should result in the vehicle failing the periodic inspection. Although CVSA did not mention automatic brake adjusters and brake adjustment indicators in its petition to amend Appendix G, FMCSA proposed changes in Appendix G relating to these brake components to ensure that vehicles may not pass the periodic inspection without this important safety equipment.

To clarify the intent of § 396.9(d)(2), FMCSA proposed to amend that section by including a specific cross reference to § 396.11(a)(3). Section 396.11(a)(3) makes it clear that all defects and deficiencies discovered by or reported to a driver—including those identified during a roadside inspection conducted under the authority of § 396.9—must be corrected (or a certification must be provided stating that repair is unnecessary) before a vehicle is operated each day. However, the Agency agreed that the language of § 396.9(d)(2) is not as explicit as it could be, and could lead to uncertainty and/or inconsistency in both the enforcement community and the motor carrier industry regarding when violations and defects noted on roadside inspection reports need to be corrected.

FMCSA proposed to amend § 396.17(f) to remove the words "roadside or" from the current regulatory text. The proposed amendment would eliminate any uncertainties and make clear that a roadside inspection is not equivalent to the periodic/annual inspection required under § 396.17. FMCSA does not believe it is appropriate to continue to allow carriers relief from this responsibility by using a roadside inspection conducted by enforcement officials to meet the periodic inspection requirement. Motor carriers will now be responsible for ensuring the completion of a periodic inspection irrespective of whether a roadside inspection is performed, and amending the regulations will require them to do so at least once every 12 months, irrespective of whether a roadside inspection is performed during that period.

In light of the proposed amendments to § 396.17(f), and to further decrease the possibility of confusion regarding differing requirements of the roadside inspection program and the periodic/annual inspection program, FMCSA proposed to delete the section at the end of Appendix G titled "*Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria).* . ."

Consistent with the proposed amendments to § 396.17, FMCSA also proposed to amend § 396.19(b) by deleting language regarding a "random roadside inspection program."

FMCSA proposed to add language to section 10 of Appendix G that would prohibit the use of speed-restricted tires on CMVs subject to the FMCSRs unless the use of such tires is specifically designated by the motor carrier. FMCSA agreed that speed-restricted tires should not be used on CMVs operating on highways in excess of 55 mph for extended periods of time.

FMCSA proposed to add a new section to Appendix G that would require an examination of motorcoach seats during the conduct of a periodic inspection in accordance with § 396.17 to ensure that they are securely attached to the vehicle structure. However, given the wide range of seat anchorage designs, coupled with the lack of testing requirements specifically for seat anchorage strength in the FMVSSs, it is not practicable for FMCSA to develop a detailed methodology for the inspection of motorcoach passenger seat mounting anchorages.

VI. Comment Response

In response to the NPRM, the Agency received 16 comments from two motor carriers (Capitol Bus Lines and Southern Company), eight organizations (the Advocates for Highway and Auto Safety (Advocates), the American Bus Association (ABA), ATA, CVSA, the National Automobile Dealers Association (NADA), the Owner-Operator Independent Drivers Association (OOIDA)), the Rubber Manufacturers Association (RMA), and the Transportation Safety Equipment Institute (TSEI), and six individuals (Steve Bixler, Jim Bramm, Richard Crawford, Richard Pingel, Robert Spoon, and Miles Verhoef).

Discussion of Issues

Section 393.5, Definition of "Major Tread Groove."

Comments: RMA supported adding a definition for "major tread groove," but recommended that "major tread groove" be defined as "the full depth space between two adjacent tread ribs or lugs on a tire that repeats along the circumference and/or at an angle across the tread area and contains a tread wear indicator. (In most cases, the locations of tread wear indicators are designated on the upper sidewall or shoulder of the tire on original tread tires.)" In addition, RMA noted that new tire tread designs feature tread grooves that are "hidden" on a new tire, but that appear and deepen and/or widen as the tire tread wears. RMA states that in most cases, the locations of tread wear indicators are designated on the tire's upper sidewall/shoulder, but that those markings are voluntary and not required by the Federal Motor Vehicle Safety Standards (FMVSS).

FMCSA Response: FMCSA believes that the definition proposed in the NPRM is sufficiently clear. The language provided by RMA added complexity without clarifying the language proposed by FMCSA. While the preamble to the NPRM stated that an illustration would be added to § 393.75 to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove, and FMCSA included a proposed illustration in the preamble, the illustration inadvertently was not included in the proposed regulatory changes. FMCSA did not receive any comments regarding the illustration, and adds it to § 393.75 as discussed in the NPRM. We anticipate that inclusion of the illustration will further enhance clarity of the regulatory language.

Table 1 to § 393.11, License Plate Lights

Comments: Jim Bramm, CVSA, and NADA recommended that the exception for vehicles not required to have a rear license plate light be extended to apply to all types of CMVs, and not be limited to truck tractors as proposed in the NPRM. Mr. Bramm stated "Our company's corporate office is located in Wisconsin and the majority of our commercial motor vehicles are registered in this state. When registering a vehicle for an apportioned plate you have the ability in this state to not only register truck tractors but other types of commercial vehicles such as dump trucks and pickup trucks. Wisconsin law states only 1 plate will be issued for apportioned registered vehicles and that plate is to be affixed to the front. Therefore I believe the wording should remain as petitioned by the ATA so that the regulation would apply to any commercial vehicle not just truck tractors."

OOIDA stated ". . . state inspectors do not have the authority to write up violations of rules that their state has not adopted. Therefore, inspectors from states that do not require rear license plates (or illumination) do not have the authority to find violations for failing to illuminate a license plate. Nor may such enforcement officials use their observation of lack of a license plate (or illumination) as probable cause to stop a truck for inspection. They only have the authority to use probable cause that there is a violation of their own state law." In addition, OOIDA noted that FMCSA "should consider what role the requirement for a license plate light plays in highway safety. The requirements for conspicuity systems clearly address night time visibility in a manner which far exceeds a license plate light. The role of a license plate light in vehicle safety should be explained and justified by FMCSA or dropped from the requirements."

FMCSA Response: FMVSS No. 108, "Lamps, reflective devices, and associated equipment" (incorporated by reference in section 393.11 of the FMCSRs), specifies comprehensive requirements to enhance the conspicuity of all motor vehicles, including CMVs, on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. While NHTSA has required license plate lamps on all vehicles since 1968, license plate lamps are not intended to enhance safety in a manner similar to the other required lamps and conspicuity treatments, and eliminating the requirement for a rear license plate lamp when no license plate is required will not reduce safety to the motoring public.

FMCSA agrees with the commenters that any regulatory changes to the requirements for license plate lamps should apply to all CMVs, and not just truck tractors as proposed in the NPRM. However, if adopted, the proposed regulatory changes would have required roadside enforcement officials in each State to know the license plate display requirements of every other State. FMCSA believes that enforcement of the license plate lamp requirement can be simplified—without compromising safety—by requiring an operable rear license plate lamp only when there is a license plate present at the time of inspection. FMCSA believes that this approach will simplify enforcement and avoid enforcement confusion and inconsistency that would likely result from the State-by-State approach outlined in the NPRM. FMCSA does not expect drivers and/or motor carriers to remove license plates to avoid citations in the event that a rear license plate lamp is missing or inoperative, and if they do, they will be subject to the more severe penalties associated with not displaying a license plate when required by law.

In response to OOIDA's concerns about the authority of an inspector to enforce regulations adopted by another State that the inspector's state has not similarly adopted, FMCSA notes that under the Motor Carrier Safety Assistance Program (MCSAP), each State is required to adopt regulations that are compatible with the FMCSRs within 3 years as a condition of receiving Federal grant funding. As such, each State will be required to adopt a regulation consistent with today's final rule requiring an operable rear license plate lamp only when there is a rear license plate present, eliminating the possibility of inconsistent State regulations.

Appendix G to the FMCSRs—ABS

Comments: CVSA supports the proposed language adding ABS to Appendix G but recommended a number of additions, corrections, and clarifications. First, CVSA states that the effective date for ABS regarding hydraulic-braked vehicles should be September 1, 1999, and not March 1, 1999, as stated in the NPRM. CVSA notes that while NHTSA originally proposed a March 1, 1999, compliance date, NHTSA later granted a petition extending the deadline to September 1, 1999. Second, CVSA recommends the addition of a second footnote to clarify that certain power units have two ABS malfunction indicators—one for the power unit and one for the towed unit(s)—and that both need to be fully functional. Third, CVSA notes that ABS powered by a backup power source (*i.e.*, the backup power from the brake lamp circuit) is not compliant with FMVSS No. 121. As such, CVSA recommends that subparagraph (2) of the proposed Appendix G requirements for ABS be amended to specifically state "ABS malfunction indicator that does not illuminate when power is first applied to the ABS controller (ECU) *during initial power up.*" Fourth, CVSA recommends adding two subparagraphs under the proposed ABS requirements in Appendix G to address FMVSS No. 121 requirements that (1) a power unit manufactured with ABS supply continuous power to the trailer, and (2) the stoplight switch power the trailer ABS system if the continuous power from the towing vehicle is interrupted.

CVSA agrees with FMCSA's proposal to add requirements for automatic brake adjusters to Appendix G, but noted that FMCSA failed to include proposed regulatory text for automatic brake adjusters in the NPRM. In its comments, CVSA (1) provided suggested language for inclusion in Appendix G, and (2) recommended use of the term "self-adjusting brake adjusters" as opposed to "automatic brake adjusters."

CVSA and Southern Company opposed the need to include requirements for brake adjustment indicators in Appendix G. CVSA states ". . . the requirement is not necessary or practical. If all brakes are in proper adjustment during the inspection, the indicators (pushrod markings) will not be visible and checking for their presence would require disassembly of or a major adjustment/readjustment of the brakes, which is not advisable. To our knowledge, the likelihood of finding a vehicle without pushrod markings is extremely low." Southern Company states that "Over the last 20 years the industry has adopted automatic slack adjusters, alleviating the concerns which lead to the brake adjustment indicators," and "This technology [brake adjustment indicators] has proven to be ineffective. After a very short time frame, the tape or plastic wears off and is no longer visible," and "Manufacturers no longer install the brake adjustment indicator."

FMCSA Response: CVSA is correct in noting that NHTSA had extended the compliance date for ABS on hydraulic-braked vehicles from March 1, 1999, to September 1, 1999, but that action was limited to an extension of the malfunction indicator lamp requirement in S5.3.3(b) of FMVSS No. 105 (64 FR 9446, February 26, 1999)—and not for the general requirement to equip hydraulic-braked vehicles with ABS. As such, all hydraulic-braked vehicles were still expected to be equipped with ABS effective March 1, 1999. As subparagraphs (1)—(3) under the ABS section in Appendix G refer specifically to the malfunction indicator, FMCSA amends footnote (1) to that section to reflect the September 1, 1999, compliance date for hydraulic-braked vehicles. In addition, FMCSA clarifies that footnote (1) applies only to subparagraphs (1)—(3) of the ABS section, and not to subparagraph (4) which addresses "other missing or inoperative ABS components." Further, FMCSA agrees with CVSA's other largely editorial recommended changes to the ABS section in Appendix G and adopts those changes as suggested.

Automatic brake adjusters automatically maintain proper brake adjustment, thus eliminating the need for frequent inspection and manual adjustment of the brakes. CVSA correctly notes that while FMCSA discussed the intent to include requirements for automatic brake adjusters in Appendix G in the preamble to the NPRM, the Agency did not provide corresponding proposed regulatory text in the NPRM. The omission of proposed regulatory text in the NPRM was inadvertent. The language recommended by CVSA in its comments is accurate and complete, and properly complements the requirements for automatic brake adjusters in FMVSS Nos. 105 and 121 that need to be included in Appendix G. FMCSA amends Appendix G to include requirements for automatic brake adjusters as suggested. With respect to CVSA's recommendation to use the term "self-adjusting brake adjusters" as opposed to "automatic brake adjusters," FMCSA retains the terminology "automatic brake adjusters" to maintain consistency with existing regulatory language in both the FMVSSs and the FMCSRs.

FMCSA discussed its intent to add requirements in Appendix G for brake adjustment indicators in the preamble to the NPRM, but did not provide corresponding proposed regulatory text. Brake adjustment indicators can improve brake adjustment by increasing the convenience of checking brake adjusters and their proper functioning. A brake adjustment indicator can reduce the time needed to assess brake adjustment status by providing a visible indication of pushrod stroke as opposed to physically measuring the push rod length before and during brake application.

While brake adjustment indicators can simplify brake inspection, CVSA is correct in noting that if brakes are in proper adjustment during an inspection, the indicators will not be visible. In this case, an inspector would have to either disassemble the brake (unhook the clevis from the slack adjuster and pull out the pushrod), or back the brakes off until they are out of adjustment to confirm that the indicators are present. Further, although both the FMVSSs and the FMCSRs require brake adjustment indicators, FMCSA understands that virtually all evaluations of brake adjustment—both during roadside inspections and periodic inspections—are made by physically measuring pushrod length before and during brake application, and that very few inspections rely solely on brake adjustment indicators. Based on the above, FMCSA has not included any specific requirements for brake adjustment indicators in Appendix G.

Section 396.9, Inspection of Motor Vehicles and Intermodal Equipment in Operation

Comments: FMCSA did not receive any comments on§ 396.9(d)(2) and amends as proposed.

FMCSA also requested comments regarding whether the current 15-day requirement in § 396.9(d)(3) for motor carriers to certify that all violations have been corrected by completing and returning the roadside inspection form to the issuing agency remains appropriate, or whether a different time period should be considered. CVSA, OOIDA, and Advocates stated that the 15-day requirement is appropriate. ABA and Capitol Bus Lines noted that, in limited circumstances, the 15-day requirement may not be sufficient when replacement parts are not readily available to conduct repairs, either because the parts need to be ordered from a different country or because the replacement parts are no longer available for older buses.

FMCSA Response: FMCSA believes that, in most cases, repairs can be made and certification of those repairs can be sent within the current 15-day time period specified in the FMCSRs. In instances where a motor carrier can demonstrate that extenuating circumstances (such as those described in the ABA and Capitol Bus Lines comments) preclude repairs from being completed and certified within the 15-day time period specified, FMCSA will address those circumstances on a case-by-case basis. However, FMCSA does not believe that the 15-day requirement in § 396.9(d)(3) for motor carriers to certify that all violations have been corrected by completing and returning the roadside inspection form to the issuing agency needs to be amended at this time.

Section 396.17, Periodic Inspection

CVSA agreed with the proposed changes, but also recommended additional changes to § 396.17 to make it clear that inspections conducted by FMCSA inspectors, investigators, and safety auditors are not equivalent to required periodic inspections. Capitol Bus Lines and ABA commented that, while several States permit motor carriers to self-certify the conduct and completion of the annual inspections required under § 396.17, other States that have implemented mandatory annual inspection programs refuse to accept the "self-certified" annual inspections conducted by the motor carrier as "legitimate annual inspections." ATA commented that "The basis for . . . this rule change appears to be . . . a change in agency philosophy rather than . . . data or factual evidence. ATA has great difficulty supporting a national policy change of this magnitude without factual evidence showing an enhanced safety benefit from this change."

Four members of OOIDA—Steve Bixler, Richard Pingel, Robert Spoon, and Miles Verhoef—submitted nearly identical comments stating that (1) they "have never seen a copy of how roadside truck inspections are supposed to be conducted;" (2) they "have never seen a copy of CVSA's out of service criteria;" (3) "If FMCSA were to publish roadside inspection and out-of-service criteria standards and procedures, it would help me know what parts of my equipment FMCSA and CVSA think I should focus on in between my periodic inspections;" and (4) "It is my right under the Constitution to be told the scope of any government search of me or my truck."

OOIDA stated that, "Where the Notice begins to discuss roadside inspection standards and the Commercial Vehicle Safety Alliance's out-of-service criteria however, the Notice is woefully deficient in informing the public what exactly these standards are. It appears that CVSA has proposed, and FMCSA consented, to proposals that remove all references to roadside inspections and the content of the out-of-service criteria in the rules. Without making those standards public, FMCSA has not given the public an adequate opportunity to comment on its proposal. If there is any imperative upon FMCSA to deal with roadside inspections and the out-of-service criteria differently than it does now, that imperative is to give the regulated public notice of their contents and scope." OOIDA also asked numerous, more specific questions relating to the general concerns noted above.

FMCSA Response: Today, the overwhelming majority of the approximately 3.5 million roadside inspections of CMVs performed annually in the United States are conducted by State personnel using funding provided under the MCSAP.

The scope of a roadside inspection conducted under the North American Standard (NAS) Inspection is quite comprehensive, and covers both (1) critical vehicle inspection items (brake systems; cargo securement; coupling devices; driveline/driveshaft; exhaust systems; frames; fuel systems; lighting devices; steering mechanisms; suspensions; tires; van and open-top trailer bodies; wheels, rims and hubs; windshield wipers; and emergency exits, electrical cables and systems in engine and battery compartments; and seating on passenger-carrying vehicles), and (2) other parts and accessories required under part 393.

However, while a roadside inspection conducted under the NAS Inspection is far-reaching, there are certain limitations to roadside procedures that prevent inspectors from properly examining all of the items in Appendix G. These include, but are not necessarily limited to, the following:

- *Brake linings and pads and brake drums or rotors:* Inspectors cannot remove wheels or dust shields; only visible components can be examined at roadside.
- *Hydraulic brakes:* Inspectors cannot disassemble components; only visible components can be examined at roadside.
- *Fifth wheels, pintle hooks:* Combination vehicles are not typically decoupled to view upper and lower fifth wheel assemblies and other coupler

assemblies; only visible components can be examined at roadside.

- *Tires:* Low boy, car hauler, and other low profile or tight clearance vehicles, and dual tire sets have limited access to the entire tire circumference without wheel removal; only visible components can be examined at roadside.
- *Wheels and rims:* Dual wheel sets may have limited access to inside wheel visibility; only visible components can be examined at roadside.

Because not every element of Appendix G is reviewed/inspected during a roadside inspection conducted under the NAS Inspection, most roadside inspections do not meet the periodic (annual) inspection requirements under § 396.17. For this reason, FMCSA does not believe it is appropriate to continue to allow motor carriers to use roadside inspections conducted by enforcement officials to satisfy the annual inspection requirements in § 396.17(f). Motor carriers or their agents will now be required to complete a periodic inspection of every CMV under its control in accordance with Appendix G at least once every 12 months, irrespective of whether a roadside inspection is performed, unless the vehicle is subject to a mandatory State inspection program in accordance with § 396.23(b)(1) which has been determined to be as effective as the requirements of § 396.17.

Section 396.23, Equivalent to periodic inspection, currently outlines two options that are deemed to be equivalent to the periodic inspections required under § 396.17—a roadside inspection program of a State or other jurisdiction, or a mandatory State inspection program which has been determined to be as effective as the Federal requirements. FMCSA did not propose any amendments to § 396.23 in the NPRM. However, and given the amendments to § 396.17(f) discussed above, it is also necessary to remove § 396.23(a) to ensure that the FMCSRs are consistent regarding the determination that a roadside inspection will no longer be considered as meeting the periodic inspection requirements of § 396.17.

In response to the specific comments to the October 2015 NPRM:

FMCSA agrees that inspections conducted by FMCSA inspectors, investigators, and safety auditors are not equivalent to required periodic inspections, and corresponding changes have been made to § 396.17, as suggested by CVSA.

In response to the comments from Capitol Bus Lines and ABA, FMCSA notes that if a motor carrier is located in a State that permits motor carriers to self-certify the conduct and completion of the annual inspections required under § 396.17, section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) establishes the principle that State inspections meeting federally approved criteria must be recognized by every other State. If, as Capitol Bus Lines and ABA contend, States that have implemented mandatory annual inspection programs refuse to accept the "self-certified" annual inspections conducted by motor carriers in other States as legitimate annual inspections, aggrieved motor carriers are encouraged to contact the FMCSA Division Administrator in their State for assistance. FMCSA notes that States may require additional inspections as a condition of issuing some type of permit or license, but additional inspections cannot be required otherwise.

While ATA argued that FMCSA failed to provide "factual evidence" to show an "enhanced safety benefit" of the proposed change, FMCSA has clearly shown that current roadside inspections conducted under the NAS Inspection do not examine every component listed in Appendix G. As such, roadside inspections conducted using the NAS Inspection procedures cannot be considered as meeting the annual inspection requirements of § 396.17. While FMCSA does not track the number of motor carriers that use a violation-free roadside inspection to meet the periodic inspection requirement or the number of roadside inspections so used, the Agency has reason to believe these numbers are small. Roadside inspections are not "scheduled" inspections, and a motor carrier therefore cannot plan to defer its periodic inspections until roadside inspections are conducted. OOIDA also commented that it "is not aware of any truck owners who have used a roadside inspection to comply with the periodic inspection requirement." Given that the estimated number of roadside inspections used to meet the periodic inspection requirement is very small, today's rule will not significantly affect carriers who relied on such inspections in the past, nor will the number of motor carrier inspection personnel and facilities now needed to perform Appendix G periodic inspections be significantly increased. Eliminating the possibility that roadside inspections can be used as equivalent to periodic inspections in the future will only enhance safety.

In response to the comments from OOIDA members Bixler, Pingel, Spoon, and Verhoef, FMCSA reiterates that all parts and accessories specified in part 393, as well as any additional parts and accessories as allowed by § 393.3, are required to be in safe and proper operating condition at all times. As such, any and all components of a CMV are subject to examination during a roadside inspection, regardless of whether those components are included in any inspection procedure or the CVSA Out-of-Service Criteria (OOSC). Importantly, the amendments made in today's rule do not have anything to do with the OOSC, which are simply a set of enforcement tolerances used by inspectors in determining whether violations discovered during an inspection pose such serious safety risks that they must be corrected immediately before the vehicle is allowed to continue. OOIDA's tangential argument that the scope of a search—its characterization of roadside inspections—"must be widely published in advance so that the regulated parties have notice of it" and that the CVSA OOSC do not meet that standard, is misguided. The Federal courts have long recognized that "[t]he CVSA's OOSC are not themselves *federal* rules subject to our review . . . . Rather, the OOSC merely interpret the standards set forth in existing *federal* and state laws and regulations. . . . [T]he *federal* regulations are the binding legal norms and the operation of a commercial vehicle that falls below the regulatory criteria is unlawful." *National Tank Truck Carriers, Inc.* v. *Federal Highway Administration,* 170 F.3d 203, 207–208 (D.C. Cir. 1999) (emphasis in original). The FMCSRs adopted through notice and comment rulemaking provide motor carriers and drivers the constitutionally required notice of their legal obligations.

Similar to the discussion above, the questions posed by OOIDA regarding roadside inspections, specific inspection procedures, and the CVSA OOSC are outside the scope of this rulemaking. The amendments made by this rule eliminate the possibility that a roadside inspection can be considered equivalent to an annual inspection, for the simple reason that not every element required to be examined during an annual inspection as identified in Appendix G to the FMCSRs is examined during a roadside inspection conducted under the NAS Inspection.

Section 396.19, Inspector Qualifications

Comments: FMCSA did not receive any comments on § 396.19(b) and amends as proposed.

Speed-Restricted Tires

Comments: In its comments, Southern Company states:

> The utility industry uses speed rated tires on their CMVs for on/off road work. Tires with a lug tread pattern design are typically speed rated and used extensively in the following industries; Utility, Municipalities, Refuse, Logging, Livestock, Farming, Construction, and by Carriers which routinely encounter snow.
>
> Based on review of the proposed changes to Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards, Section 10. Tires, the intent of the FMCSA was to eliminate speed rated tires for motorcoach CMVs.
>
> SOCO recommends that the FMCSA clarify their proposed language on the modification of the current regulations to prohibit the use of speed rated tires specifically on motorcoach CMVs only.

ABA supported FMCSA's intent to address speed-restricted tires in Appendix G, but stated that "absent a requirement for labeling maximum speeds on all tires, it will be difficult for the law enforcement community to easily determine whether tires on a vehicle in use, are appropriate." ABA recommended that FMCSA provide additional guidance regarding (1) the intended meaning of "extended periods of time," (2) how a carrier would designate the appropriate use of speed-restricted tires, and (3) when/where such designation would need to be produced for the purposes of compliance.

RMA supported the proposed amendments to Appendix G. In addition, RMA noted that amendments to (1) FMVSS No. 119 to require all tires to be labeled with a maximum speed rating, and (2) FMVSS No. 120 to include such information on a required label, would "greatly improve the ability of consumers, fleets, tire service personnel, [and] State and Federal inspection personnel to correctly identify appropriate tires for a given vehicle and vehicle operation."

FMCSA Response: Vehicles should be equipped with tires that have the proper speed rating for the vehicle's intended use, because operating a vehicle at speeds that exceed the specified tire speed rating could lead to heat build-up in a tire and cause premature or sudden tire failure. This potential safety issue could have significant consequences, especially in passenger carrier operations, and FMCSA believes that regulatory measures are necessary to ensure—to the extent practicable—that speed-restricted tires are properly installed in accordance with a vehicle's intended use.

Although the October 2003 crash in Tallulah, LA, involved a motorcoach, the NTSB Safety Recommendation was not specific only to motorcoach tires, but advised the Agency to "address a tire's speed rating to ensure that it is appropriate for a vehicle's intended use." As noted above, tires labeled with a specific speed restriction/limit should not be operated at speeds that exceed that specified limit, as doing so could lead to heat build-up and cause premature or sudden tire failure. As such, FMCSA believes that any regulatory requirements regarding speed-restricted tires should apply to all CMVs, and not to just motorcoaches as suggested by Southern Company.

The NPRM proposed to amend Appendix G to prohibit the use of speed-restricted tires on CMVs unless the use of such tires is specifically designated by the motor carrier. FMCSA believes that amending only the periodic (annual) inspection requirements in Appendix G—without a corresponding amendment to § 393.75, "Tires"—will not fully address the potential safety problem of using speed-restricted tires on vehicles that operate at speeds that exceed the rated limit of the tire as specified by the tire manufacturer. By including requirements relating to the appropriate use of speed-restricted tires in both § 393.75 and Appendix G, potential safety issues associated with the improper use of speed-restricted tires can be identified at any time and not just during periodic inspections conducted once a year. However, and because FMVSS No. 119 currently requires only tires that are speed-restricted to 55 mph or less to be labeled on the sidewall of the tire, it is not practicable to apply requirements to all tires (to include those that are rated for above 55 mph) as inspectors would have no way of easily determining the design maximum speed capability of the tire for the specified maximum load rating and corresponding inflation pressure.

Based on the above, FMCSA adopts new language in § 393.75 to prohibit the use of speed-restricted tires labeled for 55 mph or less in accordance with S6.5(e) of FMVSS No. 119 on vehicles that operate at speeds that exceed the rated limit of the tire. In addition, FMCSA amends Appendix G as proposed in the NPRM to prohibit the use of speed-restricted tires unless specifically designated by the motor carrier. This will require every CMV to be examined for the possible improper use of speed-restricted tires at least once a year.

Given that not all tires are currently required to be marked with a maximum speed rating, FMCSA understands ABA's concerns regarding how a motor carrier will adequately "designate the appropriate use of speed-restricted tires" as proposed in the NPRM. NHTSA estimates that speed-restricted tires comprise less than 2 percent of the heavy truck tires, and, as Southern Company notes, these are typically used on utility, refuse, logging, livestock, farming, construction, and similar vehicles that are more often operated in heavy mixed-use service (on/off road operations in lower speed applications). Inspectors conducting roadside inspections will rarely encounter speed-restricted tires, and can generally expect that regional and long haul trucks and motorcoaches should not be equipped with speed-restricted tires. By including a requirement in Appendix G that prohibits the use of speed-restricted tires on vehicles "unless designated by the motor carrier," motor carrier or other personnel conducting periodic inspections of the limited number of vehicles with speed-restricted tires will be prompted to confirm with the motor carrier that the use of such tires is appropriate for the specific vehicle. FMCSA retains the amendment to Appendix G as proposed in the NPRM.

Motorcoach Seat Anchorage Strength

Comments: Capitol Bus Lines agrees that seat anchor points should be inspected, and believes that "most reputable motorcoach operators check [the anchor points] as part of their 'best practices.'" However, Capitol Bus Lines also noted that "to add this item to Appendix G with no guidance as to the inspection criteria puts an undue burden on carrier maintenance personnel as to the inspection standard. The lack of guidance can also result in different interpretations as to what is acceptable between operator and enforcement personnel. It would seem appropriate that for this item to be included in Appendix G, some minimum guidance must be provided for clarity and for the benefit of both operator and enforcement personnel." ABA commented that ". . . an alternative . . . may be to make a more complimentary change to Appendix G in line with the requirements of § 393.93, and develop a proposal to look for the presence of, and evidence of well maintained, seat belt assemblies at all driver and passenger seating positions, as appropriate."

FMCSA Response: As noted in the NPRM, the wide range of seat anchorage designs, coupled with the lack of testing requirements specifically for seat anchorage strength in the FMVSSs, makes it impracticable for FMCSA to develop a detailed methodology for the inspection of motorcoach passenger seat mounting anchorages. FMCSA adopts the amendment as proposed in the NPRM.

VII. Today's Final Rule

Today's final rule codifies changes to parts 393 and 396 by adding a definition of "major tread groove" and an illustration to show the location of tread wear indicators or wear bars on a tire signifying a major tread groove; revising the rear license plate lamp requirement to eliminate the requirement for an operable rear license plate lamp on vehicles when there is no rear license plate present; prohibiting the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; providing specific requirements regarding when violations or defects noted on an inspection report must be corrected; amending Appendix G to the FMCSRs, "Minimum Periodic Inspection Standards," to include provisions for the inspection of antilock braking systems (ABS) and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; amending the periodic inspection rules to eliminate the option for a motor carrier to satisfy the periodic inspection requirement through use of a violation-free roadside inspection; and amending the inspector qualification requirements as a result of the amendments to the periodic inspection rules. In addition, the Agency eliminates introductory regulatory text from Appendix G to the FMCSRs.

VIII. Section-by-Section Analysis

A. Part 393—Parts and Accessories Necessary for Safe Operation

Section 393.5 (Definitions)

FMCSA modifies this section by adding a definition of "major tread groove."

Section 393.11 (Lamps and Reflective Devices)

FMCSA modifies Footnote 11 to Table 1 of § 393.11 dealing with rear license plates lights.

Section 393.75 (Tires)

FMCSA adds a new paragraph (f) dealing with speed-restricted tires and tread wear indicators and an illustration of a tread wear indicator.

B. Part 396—Inspection, Repair and Maintenance

Section 396.9 (Inspection of Motor Vehicles and Intermodal Equipment in Operation)

FMCSA amends paragraph (d)(2) dealing with correction of violations of defects.

Section 396.17 (Periodic Inspection)

FMCSA amends paragraph (f) to bar roadside inspections from serving as annual inspections.

Section 396.19 (Inspector Qualifications)

FMCSA amends paragraph (b) to make it consistent with amended § 396.17.

Section 396.23 (Equivalent to Periodic Inspection)

FMCSA removes § 396.23(a) to make it consistent with § 396.17, and renumbers the remainder of the section accordingly.

Appendix G to Subchapter B of Chapter III (Minimum Periodic Inspection Standards)

FMCSA amends Appendix G by adding sections 1.l and 1.m, revising section 10.c, adding section 14, and eliminating introductory regulatory text, as explained in detail above.

Amendments to Existing Regulatory Guidance

Elsewhere in today's issue of the **Federal Register**, FMCSA amends certain regulatory guidance to ensure consistency between the FMCSRs, as amended by this final rule, and the published guidance.

IX. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this final rule under that Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small business and other small entities and to minimize any significant economic impact. The term "small entities" encompasses small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.[1] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), this final rule is not expected to have a significant economic impact on a substantial number of small entities because the amendments generally do not involve the adoption of new or more stringent requirements, but, instead, the clarification of existing requirements. Therefore, there is no disproportionate burden to small entities.

Consequently, I certify that the action will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mike Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of the rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

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[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, taken together, or by the private sector, of $155 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2014 levels) or more in any 1 year. This final rule would not result in such an expenditure.

E. Paperwork Reduction Act

This final rule calls for no new collection of information and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Executive Order 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA has determined that this final rule does not have substantial direct effects on or costs to States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

G. Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. Executive Order 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not present an environmental or safety risk that would disproportionately affect children.

I. Executive Order 12630 (Taking of Private Property)

FMCSA has reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

This rule does not require a PIA because it does not require the collection of personally identifiable information (PII).

K. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

L. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Executive Order 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

O. Environment (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this final rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6(z)(aa) and 6(z)(bb). The Categorical Exclusion (CE) in paragraph 6(z)(aa) covers regulations requiring motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road. The CE in paragraph 6(z)(bb) covers regulations concerning vehicle operation safety standards (*e.g.*, regulations requiring: certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (*e.g.*, fire extinguishers and flares). The CE determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this rule will have no environmental justice effects, nor would its promulgation have any collective environmental impact.

List of Subjects

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated above, FMCSA amends 49 CFR chapter III, subchapter B, as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

■ 2. Amend § 393.5 to add a definition for "Major tread groove" in alphabetical order to read as follows:

§ 393.5 Definitions.

* * * * *

Major tread groove is the space between two adjacent tread ribs or lugs on a tire that contains a tread wear indicator or wear bar. (In most cases, the locations of tread wear indicators are designated on the upper sidewall/shoulder of the tire on original tread tires.)

* * * * *

■ 3. In § 393.11, revise Footnote 11 of Table 1 to read as follows:

§ 393.11 Lamps and reflective devices.

* * * * *

Table 1 of § 393.11—Required Lamps and Reflectors on Commercial Motor Vehicles

* * * * *

Footnote—11 To be illuminated when headlamps are illuminated. No rear license plate lamp is required on vehicles that do display a rear license plate.

* * * * *

■ 4. In § 393.75:

■ a. Redesignate paragraphs (f) through (h) as paragraphs (g) through (i) and in redesignated paragraph (g) remove "paragraph (g)" and add in its place "paragraph (h)";

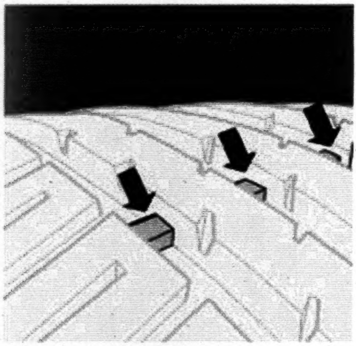
■ b. Add a new paragraph (f) and add Figure 23—"Location of Tread Wear Indicators or Wear Bars Signifying a Major Tread Groove" immediately following new paragraph (f) to read as follows:

§ 393.75 Tires.

* * * * *

(f) No motor vehicle may be operated with speed-restricted tires labeled with a maximum speed of 55 mph or less in accordance with S6.5(e) of FMVSS No. 119 at speeds that exceed the rated limit of the tire.

Figure 23 – "Location of Tread Wear Indicators or Wear Bars Signifying a Major Tread Groove"



* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 5. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 6. Revise § 396.9(d)(2) to read as follows:

§ 396.9 Inspection of motor vehicles and intermodal equipment in operation.

* * * * *

(d) * * *

(2) Motor carriers and intermodal equipment providers shall examine the report. Violations or defects noted

thereon shall be corrected in accordance with § 396.11(a)(3). Repairs of items of intermodal equipment placed out-of-service are also to be documented in the maintenance records for such equipment.

* * * * *

■ 7. Revise § 396.17(f) to read as follows:

§ 396.17 Periodic inspection.

* * * * *

(f) Vehicles passing periodic inspections performed under the auspices of any State government or equivalent jurisdiction, meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed.

* * * * *

■ 8. Revise § 396.19(b) to read as follows:

§ 396.19 Inspector qualifications.

* * * * *

(b) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section. They must retain this evidence for the period during which that individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed as part of a State periodic inspection program.

§ 396.23 [Amended]

■ 9. In § 396.23, remove paragraph (a) and redesignate paragraph (b) as paragraph (a) and reserve a new paragraph (b).

■ 10. Amend Appendix G to Subchapter B of Chapter III by:

■ a. Adding Section 1.l and footnotes 1 and 2;

■ b. Adding Section 1.m;

■ b. Adding Section 10.c;

■ c. Adding Section 14; and

■ d. Removing "Comparison of Appendix G, and the New North American Uniform Driver Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)," including the introductory text and paragraphs 1.–13.

The additions read as follows:

Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards

* * * * *

1. Brake System

* * * * *

l. *Antilock Brake System*[1]

(1) Missing ABS malfunction indicator components (*i.e.*, bulb, wiring, etc.).

(2) ABS malfunction indicator that does not illuminate when power is first applied to the ABS controller (ECU) during initial power up.

(3) ABS malfunction indicator that stays illuminated while power is continuously applied to the ABS controller (ECU).

(4) ABS malfunction indicator lamp on a trailer or dolly does not cycle when electrical power is applied:

(a) Only to the vehicle's constant ABS power circuit, or

(b) Only to the vehicle.[2]

(5) With its brakes released and its ignition switch in the normal run position, power unit does not provide continuous electrical power to the ABS on any vehicle it is equipped to tow.

(6) Other missing or inoperative ABS components.

m. Automatic Brake Adjusters

(1) Failure to maintain a brake within the brake stroke limit specified by the vehicle manufacturer.

(2) Any automatic brake adjuster that has been replaced with a manual adjuster.

(3) Damaged, loose, or missing components.

(4) Any brake that is found to be out of adjustment on initial inspection must be evaluated to determine why the automatic brake adjuster is not functioning properly and the problem must be corrected in order for the vehicle to pass the inspection. It is not acceptable to manually adjust automatic brake adjusters without first correcting the underlying problem. For example, there may be other components within the braking system that are distressed or out of specification (*i.e.*, broken welds, loose mounting hardware, cracked brake drums, worn bushings, etc.) that would require immediate attention.

* * * * *

10. Tires

* * * * *

c. Installation of speed-restricted tires unless specifically designated by motor carrier.

* * * * *

14. Motorcoach Seats

a. Any passenger seat that is not securely fastened to the vehicle structure.

b. [Reserved]

Issued under the authority of delegation in 49 CFR 1.87. July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17364 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–EX–P

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[1] Power units manufactured after March 1, 2001, have two ABS malfunction indicators, one for the power unit and one for the units that they tow. Both malfunction indicators are required to be fully functional.

[2] This section is applicable to tractors with air brakes built on or after March 1, 1997, and all other vehicles with air brakes built on or after March 1, 1998. This section is also applicable to vehicles over 10,000 lbs. GVWR with hydraulic brakes built on or after March 1, 1999.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 396

[Docket No. FMCSA–2015–0176]

RIN 2126–AB81

Amendments to Regulatory Guidance Concerning Periodic Inspection of Commercial Motor Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Amendment of regulatory guidance.

SUMMARY: FMCSA amends regulatory guidance, previously published in the **Federal Register**, regarding the periodic inspection of commercial motor vehicles (CMVs). Elsewhere in today's issue of the **Federal Register**, FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to, among other things, eliminate the option for a motor carrier to satisfy the periodic (annual) inspection requirement through a violation-free roadside inspection. As a result of this amendment to the FMCSRs, certain regulatory guidance is amended to ensure consistency between the FMCSRs and the published guidance.

DATES: *Effective Date:* This regulatory guidance is effective July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202–366–5370; *michael.huntley@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 17, 1993, the Federal Highway Administration (FHWA)[1] published "Regulatory Guidance for the Federal Motor Carrier Safety Regulations" at 58 FR 60734. The publication included interpretations of

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[1] The Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1748 (December 9, 1999)] established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule delegating to the FMCSA Administrator the motor carrier safety functions required by MCSIA, which included certain motor carrier safety functions previously delegated to the FHWA (65 FR 200).

49 CFR 396.17, a rule that requires all CMVs to be inspected at least once every 12 months in accordance with Appendix G to the FMCSRs ("Minimum Periodic Inspection Standards"), and 49 CFR 396.23, a rule that identifies alternative inspections that are considered equivalent to the annual inspection required under 49 CFR 396.17. The Agency interpreted the regulations to permit a roadside inspection to be considered as equivalent to the annual inspection. The regulatory guidance was republished on April 4, 1997, at 62 FR 16370.

A final rule issued by FMCSA, published elsewhere in today's issue of the **Federal Register**, amends 49 CFR 396.17(f) and removes 49 CFR 396.23(a) to eliminate the option for a motor carrier to meet the periodic inspection requirements through roadside inspections.

Because not every element of Appendix G is reviewed/inspected during a roadside inspection conducted under the North American Standard Inspection, most roadside inspections do not meet the periodic (annual) inspection requirements under 49 CFR 396.17. For this reason, FMCSA does not believe it is appropriate to continue to allow motor carriers to use roadside inspections conducted by enforcement officials to satisfy the annual inspection requirements in 49 CFR 396.17(f). Motor carriers or their agents will now be required to complete a periodic inspection of every CMV under their control in accordance with Appendix G at least once every 12 months, irrespective of whether a roadside inspection is performed, unless the vehicle is subject to a mandatory State inspection program in accordance with 49 CFR 396.23 which has been determined to be as effective as the requirements of 49 CFR 396.17.

Given the amendments to 49 CFR 396.17(f) discussed above, the final rule also removes 49 CFR 396.23(a), which currently permits a roadside inspection program of a State or other jurisdiction to be considered as meeting the periodic inspection requirements of 49 CFR 396.17.

As a result of the final rule, and to maintain consistency between the amended FMCSRs and the published regulatory guidance, two regulatory guidance questions/answers are amended as follows:

Section 396.17, Question 1

Question 1: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program which has been determined to be as effective as the Federal periodic inspection program, but these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program in order to meet the Federal periodic inspection requirements?

Guidance: If the State requires all vehicles registered in the State to be inspected through its mandatory program, then the motor carrier must use the State program to satisfy the Federal requirements. If, however, the State inspection program includes an exception or exemption for vehicles which are registered in the State but domiciled outside of the State, then the motor carrier may meet the Federal requirements through a self-inspection, a third party inspection, or a periodic inspection performed in any State with a program that the Federal Motor Carrier Administration (FMCSA) determines is comparable to, or as effective as, the part 396 requirements.

Section 396.23, Question 1

Question 1: Can a violation-free Commercial Vehicle Safety Alliance (CVSA) Level I or Level V inspection be used to satisfy the periodic inspection requirements of § 396.17?

Guidance: No, a CVSA Level I or Level V inspection is not equivalent to the Federal periodic inspection requirements.

Issued on July 14, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–17362 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160222132–6585–02]

RIN 0648–BF77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 17A

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule extends the current Gulf commercial shrimp permit moratorium for 10 more years. The intent of this final rule and Amendment 17A is to protect federally managed Gulf shrimp stocks while promoting catch efficiency, economic efficiency, and stability in the fishery.

DATES: This rule is effective August 22, 2016.

ADDRESSES: Electronic copies of Amendment 17A, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2016/am17a/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 5, 2016, NMFS published a notice of availability for Amendment 17A and requested public comment (81 FR 19547). On April 14, 2016, NMFS published a proposed rule for Amendment 17A and requested public comment (81 FR 22042). The proposed rule and Amendment 17A outline the rationale for the actions contained in this final rule. A summary of the action implemented by Amendment 17A and this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule extends the Gulf shrimp Federal permit moratorium until October 26, 2026. Through Amendment 13 to the FMP, the Council established a 10-year moratorium on the issuance of new Federal commercial shrimp vessel permits (71 FR 56039, September 26, 2006). The moratorium on permits indirectly controls shrimping effort in Federal waters and thereby bycatch levels of juvenile red snapper and sea turtles. The final rule implementing the moratorium became effective October 26, 2006, and the moratorium permits became effective in March 2007. Extending the moratorium for an additional 10 years until October 26, 2026, is expected to maintain the biological, social, and economic benefits to the shrimp fishery achieved under the moratorium permit over the past 10 years.

Comments and Responses

NMFS received a total of 831 submissions from the public on Amendment 17A and the proposed rule. Of these submissions, 702 expressed general support for an extension of the permit moratorium. Some comments within the submissions addressed issues beyond the scope of Amendment 17A or the proposed rule, such as prohibiting shrimp trawling to reduce the impact on sea turtles and other marine life and modifying the requirements for turtle excluder devices and observers. From the submissions, NMFS has identified six issues related to Amendment 17A and the proposed rule. These comments and NMFS' respective responses are summarized below.

Comment 1: Extending the permit moratorium would protect and expand gains in the shrimp fishery by limiting potential exploitation. Gulf shrimp landings have only slightly declined during the past 10 years and catch per day has increased.

Response: NMFS agrees that continuing the moratorium would constrain effort and protect economic gains from higher catch rates. Returning the fishery to open access could undo any positive effects of the moratorium. Removing the moratorium would allow an unlimited number of new entrants into the commercial shrimp fishery and could have negative effects if the fishery then became overcapitalized. Overcapitalization or effort increases could lead to increases in sea turtle and red snapper bycatch and could result in additional requirements to reduce bycatch.

Before the moratorium was implemented, increasing fuel costs, decreasing shrimp prices, and increasing foreign shrimp imports were all contributing to the overcapitalization of the commercial shrimp fleet. Since implementation of the moratorium, the catch per unit effort for the offshore shrimp fishery increased and has remained relatively constant. Additional effort in the fishery could negate, or at least lessen, profitability for the Gulf shrimp fleet as a whole.

Comment 2: There is no need for continuing the moratorium because of the decreasing number of valid permits over last 10 years.

Response: NMFS disagrees that the moratorium should be allowed to expire. The Council determined, and NMFS agrees, that extending the moratorium for an additional 10 years will continue stability for the fishery. As explained in the response to Comment 1, continuing the moratorium would constrain effort and protect economic gains from higher catch rates. The moratorium also indirectly controls effort and, therefore, bycatch levels of juvenile red snapper and sea turtles. Returning to an open access fishery would promote a return to less stable economic conditions.

Comment 3: Continuing the permit moratorium will help protect sea turtles and other marine life.

Response: NMFS agrees. In 2014, NMFS issued a biological opinion on the continued authorization of the Southeast U.S. shrimp fisheries in Federal waters on threatened and endangered species (including sea turtles) and designated critical habitat, in accordance with the Endangered Species Act (ESA). The sea turtle effects analyses and incidental take statement in the opinion were based on the expectation that future total effort levels in the southeastern shrimp fisheries would remain at or below 2009 effort levels. An increase in shrimp effort greater than the 2009 level may require re-initiation of the Endangered Species Act consultation and further rulemaking to address any increased effects on sea turtles. Continuing the moratorium would cap effort and reduce the chance of exceeding the 2009 effort levels, thereby continuing to limit any adverse effects of the shrimp fishery on sea turtles and other marine life.

Comment 4: Gulf shrimp permit holders who have lost their moratorium permit due to non-renewal should be allowed to re-apply for a shrimp permit.

Response: NMFS disagrees. The purpose of the moratorium was to limit the number of permits available to fish for shrimp because the fishery was overcapitalized, as described in the response to Comment 1.

The Federal Gulf shrimp moratorium permit is renewable for up to 1 year from its date of expiration. NMFS sends a renewal letter and permit application to the permit holder 1 month prior to the permit's expiration date. After a year with no permit renewal, a permit is terminated and permanently removed from the permit pool. However, valid permits are fully transferable, which may allow someone who has lost a permit as a result of non-renewal to obtain a new permit.

Comment 5: As a result of the moratorium, the current market price of permits is too high.

Response: NMFS disagrees. Based on the best available information, the current average price of a moratorium permit is approximately $5,000, and this price has been relatively constant since the moratorium was put in place. Thus, permits are not any more costly than they were 10 years ago, and in fact are likely less costly in real (inflation-adjusted) terms. Moreover, as previously noted, average profitability in the fishery has improved in recent years. An economically efficient business desiring to enter the fishery would be expected to recoup this cost relatively quickly and, thus, NMFS does not consider the cost of obtaining a permit to be onerous for businesses wanting to enter the fishery.

Comment 6: Permit holders who sub-lease shrimp moratorium permits should be required to forfeit the permits.

Response: NMFS disagrees. Although shrimp moratorium permits are fully transferable and a permit may be transferred to a vessel that is leased, there is no mechanism to sub-lease a permit through NMFS. To the extent the commenter is stating that the permits should not be transferable, economic efficiency is promoted when resources are allowed to shift to their most valuable use. The full transferability of permits is expected to improve economic efficiency by allowing those who place the greatest economic value on these permits to buy them. Any restrictions on the transferability of permits would be expected to reduce economic efficiency in the fishery, contrary to the objectives of Amendment 17A and this final rule.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 17A, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS did not receive any comments from SBA's Office of Advocacy or the public on the certification in the proposed rule. NMFS received two comments regarding the economic analysis of Amendment 17A and the proposed rule. One comment suggested that the current market price of moratorium permits is too high and the other comment stated that permit holders who sub-lease shrimp moratorium permits should be required to forfeit the permits. NMFS disagrees with these comments as explained in the responses to comments 5 and 6, above. The factual basis for the certification was published in the proposed rule and is repeated below.

The current moratorium on Gulf shrimp permits became effective on October 26, 2006 (71 FR 56039, September 26, 2006). This final rule extends the current moratorium on Federal Gulf shrimp permits until October 26, 2026. The purpose of this rule is to maintain the biological, social, and economic benefits to the Gulf shrimp fishery achieved under the current moratorium. The objectives of this rule are to protect federally managed Gulf shrimp stocks, and promote catch efficiency, economic efficiency, and stability in the Gulf shrimp fishery.

This final rule is expected to directly regulate businesses that possess Federal Gulf shrimp moratorium permits. As of September 21, 2015, there were 1,464 vessels with valid or renewable Gulf shrimp moratorium permits. Although some permits are thought to be held by businesses with the same or substantively the same individual owners, and thus would likely be considered affiliated, ownership data for Gulf shrimp permit holders is incomplete and thus it is not currently feasible to accurately determine whether businesses that have these permits are in fact affiliated. NMFS is currently making changes to its permit application forms so that such determinations can be accurately made for future regulatory actions in this fishery. As a result of the incomplete ownership data, for purposes of this analysis, NMFS assumes each vessel is independently owned by a single business, which will result in an overestimate of the actual number of businesses directly regulated by this final rule. Thus, NMFS estimates the number of businesses directly regulated by this final rule to be 1,464.

Based on landings and economic data from 2013, which is the most current year for which complete economic data is available, all of these businesses are thought to be primarily engaged in shellfish harvesting activities (*e.g.*, Gulf shrimp, South Atlantic shrimp, and Atlantic sea scallops fisheries). In 2013, the primary source of gross revenue for approximately 84 percent of these businesses was landings from one or more of these shellfish fisheries, while the other 16 percent did not have commercial landings in any fishery. A certain percentage of businesses with Gulf shrimp permits are usually inactive in the Gulf shrimp fishery in a given year, because of economic conditions in that fishery, other fisheries, or other industries (*e.g.*, oil and gas) in which these businesses, their owners, and their crew sometimes participate. Some businesses may have also been inactive due to issues associated with the Deepwater Horizon MC252 event in 2010, and subsequent payouts from British Petroleum (BP). NMFS only possesses data on such payouts and other transfer payments for a sample of the permitted businesses, and thus cannot confirm the extent to which such payouts contributed to the lack of commercial harvesting activity by all of the inactive businesses. Given the lack of data to the contrary and because these businesses possess Gulf shrimp moratorium permits, for the purpose of this analysis, these 1,464 businesses are assumed to be primarily engaged in commercial shellfish harvesting.

From 2011 through 2013, the greatest average annual gross revenue earned by a single business was approximately $2.48 million. On average, a business with a Gulf shrimp moratorium permit had an annual gross revenue of approximately $247,000, annual net revenue from operations (commercial fishing activities) of approximately $6,300, and an annual economic profit of approximately $37,000. All monetary estimates are in 2001 dollars. Average annual economic profit was greater between 2011 and 2013 compared to the 2006 through 2009 time period, and greater than net revenue from operations, partly because of non-fishing related income, mostly in the form of payouts from BP (*i.e.*, transfer payments) due to the Deepwater Horizon MC252 event in 2010. Thus, although the average profit margin from 2011 through 2013 was nearly 15 percent of gross revenue, the average margin from operations was only about 2.6 percent. Though relatively small, this margin from operations is still greater than what these businesses earned between 2006 and 2009 when net revenue from operations was generally negative, on average.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

Pursuant to the RFA, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are shellfish commercial fishing businesses and were considered small under the SBA's size standards, and thus they all would continue to be considered small under the new standard. Thus, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

Based on the information above, a reduction in profits for a substantial number of small entities is not expected. The Chief Counsel for Regulation of the Department of Commerce hereby reaffirms that the rule will not have a significant economic impact on a substantial number of small entities. Because this final rule, if implemented, is not expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule will not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Permits, Shrimp.

Dated: July 14, 2016.

Samuel D. Rauch III,

Deputy Assistant for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.50, revise the introductory text of paragraph (b) to read as follows:

§ 622.50 Permits, permit moratorium, and endorsements.

* * * * *

(b) *Moratorium on commercial vessel permits for Gulf shrimp.* The provisions of this paragraph (b) are applicable through October 26, 2026.

* * * * *

[FR Doc. 2016–17272 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 81, No. 141

Friday, July 22, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1308; Airspace Docket No. 12–ASO–44]

Proposed Establishment of Class E Airspace; Camden, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Camden, AL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Camden Municipal Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room 12–140, Washington, DC 20590; Telephone: 1–800–647–5527 or 202–366–9826. You must identify the Docket Number FAA–2012–1308; Airspace Docket No. 12–ASO–44, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Camden Municipal Airport, Camden, AL.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2012–1308; Airspace Docket No. 12–ASO–44." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 to establish Class E airspace at Camden, AL., providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Camden Municipal Airport. Controlled airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the airport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment:

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71 —DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Camden, AL [New]

Camden Municipal Airport, AL
(Lat. 31°58′47″ N., long. 87°20′21″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Camden Municipal Airport

Issued in College Park, Georgia, on July 15, 2016.

Ryan W. Almasy,
Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–17310 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6775; Airspace Docket No. 16–ASO–9]

Proposed Establishment of Class E Airspace; Murray, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Murray, KY, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Murray Calloway County Hospital Heliport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the heliport.

DATES: Comments must be received on or before September 6, 2016.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–647–9826.You must identify the Docket No. FAA–2016–6775; Airspace Docket No. 16–ASO–9, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Murray

Calloway County Hospital Heliport, Murray, KY.

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6775; Airspace Docket No. 16–ASO–9." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Murray, KY, providing the controlled airspace required to support the new Copter RNAV (GPS) standard instrument approach procedures for Murray Calloway County Hospital Heliport. Controlled airspace extending upward from 700 feet above the surface within a 6-mile radius of the heliport would be established for IFR operations.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Murray, KY [New]

Murray Calloway County Hospital Heliport, KY

(Lat. 36°36′27″ N., long. 88°18′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Murray Calloway County Hospital Heliport.

Issued in College Park, Georgia, on July 15, 2016.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–17311 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102516–15]

RIN 1545–BM65

Income Inclusion When Lessee Treated as Having Acquired Investment Credit Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document withdraws the notice of proposed rulemaking published in the **Federal Register** on December 20, 1985, and the notice of proposed rulemaking published in the **Federal Register** on September 21, 1987. In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and the IRS are issuing temporary regulations relating to the income inclusion rules under section 50(d)(5) of the Internal Revenue Code (Code) that are applicable to a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 20, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–102516–15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–102516–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–102516–15).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer A. Records at (202) 317–6853; concerning submissions of comments and requests for a public hearing, Regina Johnson of the Publications and Regulations Branch at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On December 20, 1985, the Treasury Department and the IRS published in the **Federal Register** (50 FR 51874–01) a notice of proposed rulemaking (LR–92–73) under sections 46, 47, 48, and 167 providing proposed rules related to the determination of the amount of taxpayer's qualified investment and recapture of the investment credit with respect to mass assets. On September 21, 1987, the Treasury Department and the IRS published in the **Federal Register** (52 FR 35438–01) a notice of proposed rulemaking (LR–183–82) under sections 48, 196, 312, and 705 providing proposed rules related to the adjustment in the basis of property with respect to which a taxpayer claimed the investment credit. On April 27, 1993, the Treasury Department and the IRS withdrew (58 FR 25587–01) the proposed amendments to § 1.48–7 of the Income Tax Regulations that were published as part of the notice of proposed rulemaking (LR–183–82) published in the **Federal Register** (52 FR 35438–01) on September 21, 1987. Because of numerous statutory changes since the publication of those proposed regulations, the remainder of the proposed regulations (50 FR 51874–01 and 52 FR 35438–01) are withdrawn.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 50(d)(5). The temporary regulations provide rules regarding the income inclusion required under section 50(d)(5) of the Code by a lessee of investment credit property when a lessor of such property elects to treat the lessee as having acquired the property. The temporary regulations also provide rules to coordinate the section 50(a) recapture rules with the section 50(d)(5) income inclusion rules and rules regarding income inclusion upon a disposition or lease termination outside of the recapture period. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Specifically, the Treasury Department and the IRS request comments regarding whether guidance is needed to address the applicability of the income inclusion rules under section 50(d)(5) to trusts, estates, and/or electing large partnerships. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jennifer A. Records, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under authority of 26 U.S.C. 7805, the notice of proposed rulemaking (LR–92–73) that was published in the **Federal Register** on December 20, 1985 (50 FR 51874–01), and the notice of proposed rulemaking (LR–183–82) that was published in the **Federal Register** on September 21, 1987 (52 FR 35438–01), are withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.50–1 is revised to read as follows:

§ 1.50–1 Lessee's income inclusion following election of lessor of investment credit property to treat lessee as acquirer.

[The text of proposed amendment to § 1.50–1 is the same as the text of § 1.50–1T(a) through (f) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–16561 Filed 7–21–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 147

[CMS–9931–NC]

Coverage for Contraceptive Services

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: This document is a request for information on whether there are alternative ways (other than those offered in current regulations) for eligible organizations that object to providing coverage for contraceptive services on religious grounds to obtain an accommodation, while still ensuring that women enrolled in the organizations' health plans have access to seamless coverage of the full range of Food and Drug Administration-approved contraceptives without cost sharing. This information is being solicited in light of the Supreme Court's opinion in *Zubik* v. *Burwell,* 136 S. Ct. 1557 (2016). The Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) invite public comments via this request for information.

DATES: Comments must be submitted on or before September 20, 2016.

ADDRESSES: In commenting, please refer to file code CMS–9931–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9931–NC, P.O. Box 8010, Baltimore, MD 21244–8010. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9931–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: David Mlawsky, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at (410) 786–1565.

Elizabeth Schumacher or Suzanne Adelman, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335.

Karen Levin, Internal Revenue Service, Department of the Treasury, at (202) 317–6846.

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the CMS Web site (*www.cciio.cms.gov*), and information on health reform can be found at *http://www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively known as the Affordable Care Act. The Affordable Care Act reorganizes, amends, and adds to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815(a)(1) to the

Internal Revenue Code (Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and to make those provisions applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. The sections of the PHS Act incorporated into ERISA and the Code are sections 2701 through 2728.

Section 2713 of the PHS Act, as added by the Affordable Care Act and incorporated into ERISA and the Code, requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing. These preventive services include preventive care and screenings for women provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA). On August 1, 2011, the Departments amended regulations to cover women's preventive services provided for in HRSA guidelines,[1] and HRSA adopted and released such guidelines, which were based on recommendations of the independent organization, the National Academy of Medicine (formerly Institute of Medicine). The preventive services identified in the HRSA guidelines include all Food and Drug Administration (FDA)-approved contraceptives, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider (collectively, contraceptive services).[2]

The Departments issued regulations that provide an accommodation for eligible organizations that object on religious grounds to providing coverage for contraceptive services.[3] Under the accommodation, an eligible organization does not have to contract, arrange, pay, or provide a referral for contraceptive coverage. At the same time, the accommodation generally ensures that women enrolled in the health plan established by the eligible organization, like women enrolled in health plans maintained by other employers, receive contraceptive coverage seamlessly—that is, through the same issuers or third party administrators that provide or administer the rest of their health coverage, and without financial, logistical, or administrative obstacles.[4] Minimizing such obstacles is essential to achieving the purpose of the Affordable Care Act's preventive services provision, which seeks to remove barriers to the use of preventive services and to ensure that women receive full and equal health coverage appropriate to their medical needs.

Under the Departments' regulations, an eligible organization may invoke the accommodation by self-certifying its eligibility using a form provided by the Department of Labor, EBSA Form 700, and providing the form to its health insurance issuer (to the extent it has an insured plan) or third party administrator (to the extent it has a self-insured plan).[5] Alternatively, instead of sending the self-certification form to its issuer or third party administrator, the regulations allow an eligible organization to invoke the accommodation by providing certain information to HHS, without using any particular form.[6]

In *Zubik* v. *Burwell,* 136 S. Ct. 1557 (2016), the Supreme Court considered claims by a number of employers that, even with the accommodation provided in the regulations, the contraceptive-coverage requirement violates the Religious Freedom Restoration Act of 1993 (RFRA). Following oral argument, the Court requested supplemental briefing from the parties. The Court's order noted that under the existing regulations, an objecting employer with an insured plan that seeks to invoke the accommodation by contacting its issuer must use a form of notice provided by the government.[7] The Court directed the parties to file supplemental briefs addressing "whether contraceptive coverage could be provided to [the objecting employers'] employees, through [the employers'] insurance companies, without any such notice." [8] After consideration of the supplemental briefing, the Supreme Court vacated the judgments of the courts below and remanded *Zubik* and several other cases raising parallel RFRA challenges to the accommodation. 136 S. Ct. at 1560–1561. The Court emphasized that it "expresse[d] no view on the merits of the cases" and, in particular, that it did not "decide whether [the employers'] religious exercise has been substantially burdened, whether the Government has a compelling interest, or whether the current regulations are the least restrictive means of serving that interest." *Id.* at 1560. The Court, however, stated that in light of what it viewed as "the substantial clarification and refinement in the positions of the parties" in their supplemental briefs, the parties "should be afforded an opportunity to arrive at an approach going forward that accommodates [the objecting employers'] religious exercise while at the same time ensuring that women covered by [the employers'] health plans 'receive full and equal health coverage, including contraceptive coverage.'" *Id.* (citation omitted).

As the government explained in its briefs in *Zubik,* the Departments continue to believe that the existing accommodation regulations are consistent with RFRA for two independent reasons. First, as eight of the nine courts of appeals to consider the issue have held, the accommodation does not substantially burden objecting employers' exercise of religion. Second, as some of those courts have also held, the accommodation is the least restrictive means of furthering the government's compelling interest in ensuring that women receive full and equal health coverage, including contraceptive coverage. Nevertheless, the Departments also are committed to respecting the beliefs of religious employers that object to providing contraceptive coverage, and the Departments have consistently sought to accommodate religious objections to the contraceptive-coverage requirement even where not required to do so by RFRA. Consistent with that approach, the Departments are issuing this Request for Information (RFI) to determine, as contemplated by the Supreme Court's opinion in *Zubik,* whether modifications to the existing accommodation procedure could resolve the objections asserted by the plaintiffs in the pending RFRA cases while still ensuring that the affected women seamlessly receive full and equal health coverage, including contraceptive coverage.

The Departments are using the RFI procedure because the issues addressed in the supplemental briefing in *Zubik* affect a wide variety of stakeholders, including many who are not parties to the cases that were before the Supreme Court. Other employers also have brought RFRA challenges to the accommodation, and their views may differ from the views held by the employers in *Zubik* and the consolidated cases. In addition, any change to the accommodation could have implications for the rights and obligations of issuers, third party administrators, and women enrolled in health plans established by objecting employers. RFIs are commonly used to solicit public comments on potential rulemaking in a transparent and open way. Information gathered through this RFI will be used to determine whether changes to the current regulations should be made and, if so, to inform the nature of those changes. The Departments welcome comments from all stakeholders. A principal purpose of this RFI is to determine whether there are modifications to the accommodation that would be available under current law and that could resolve the RFRA claims raised by organizations that object to the existing accommodation on religious grounds. The Departments invite all such organizations to submit comments, and request that their submissions include specific responses to the questions posed below.[9]

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[1] 26 CFR 54.9815–2713, 29 CFR 2590.715–2713, 45 CFR 147.130.

[2] The HRSA guidelines exclude services relating to a man's reproductive capacity, such as vasectomies and condoms.

[3] 26 CFR 54.9815–2713A, 29 CFR 2590.715–2713A, 45 CFR 147.131.

[4] An accommodation is also available with respect to student health insurance coverage arranged by eligible organizations that are institutions of higher education. 45 CFR 147.131(f). For ease of use, this RFI refers only to "employers" with religious objections to the contraceptive-coverage requirement, but references to employers with respect to insured group health plans should also be considered to include institutions of higher education that are eligible organizations with respect to student health insurance coverage.

[5] The EBSA form 700 is available at: *https://www.dol.gov/ebsa/pdf/preventiveserviceseligibleorganizationcertificationform.pdf*

[6] A model notice to HHS that eligible organizations may, but are not required to, use is available at: *http://www.cms.gov/cciio/resources/Regulations-and-Guidance/index.html#Prevention.*

[7] *Zubik* v. *Burwell,* Nos. 14–1418 et al., 2016 WL 1203818, at *2 (Mar. 29, 2016).

[8] *Id.*

II. Solicitation of Comments

A. Notification to Issuers Without Self-Certification

In its request for supplemental briefing in *Zubik,* the Supreme Court asked the parties to address whether and how "contraceptive coverage may be obtained by [objecting employers'] employees through [the employers'] insurance companies, but in a way that does not require any involvement of [the employers] beyond their own decision to provide health insurance without contraceptive coverage to their employees."[10] In particular, the Court posited "a situation in which [objecting employers] would contract to provide health insurance for their employees, and in the course of obtaining such insurance, inform their insurance company that they do not want their health plan to include contraceptive coverage of the type to which they object on religious grounds. [The employers] would have no legal obligation to provide such contraceptive coverage, would not pay for such coverage, and would not be required to submit any separate notice to their insurer, to the Federal government, or to their employees. At the same time, [the employers'] insurance compan[ies]—aware that [the employers] are not providing certain contraceptive coverage on religious grounds—would separately notify [the employers'] employees that the insurance company will provide cost-free contraceptive coverage, and that such coverage is not paid for by [the employers] and is not provided through [the employers'] health plan[s]."[11]

In response, the government explained:

> For employers with insured plans, the Court described an arrangement very similar to the existing accommodation. The accommodation already relieves [employers with religious objections] of any obligation to provide contraceptive coverage and instead requires insurers to provide coverage separately. The only difference is the way the accommodation is invoked. Currently, an employer that chooses to opt out by notifying its insurer (rather than HHS) must use a written form self-certifying its religious objection and eligibility for the accommodation. The Court's order posited an alternative procedure in which the employer could opt out by asking an insurer for a policy that excluded contraceptives to which it objects. That request would not need to take any particular form, but the employer and the insurer would be in the same position as after a self-certification: The employer's obligation to provide contraceptive coverage would be extinguished, and the insurer would instead be required to provide the coverage separately." Gov't Supp. Brief 2 (citation omitted); see *id.* 3–7.[12]

The government explained that because "[i]nsurers have an independent statutory obligation to provide contraceptive coverage," "the accommodation for employers with insured plans could be modified to operate in the manner posited in the Court's order while still ensuring that the affected women receive contraceptive coverage seamlessly, together with the rest of their health coverage." *Id.* at 14–15. The government also noted, however, that the current requirement of a written self-certification plays an important role in effectuating the accommodation, and therefore cautioned that such a modification could "impose real costs on the parties whose rights and duties are affected—including objecting employers." *Id.* at 14; see *id.* at 8–11 (describing the function of the self-certification requirement).

The Departments seek comments from all interested stakeholders, including all objecting employers, on the procedure for invoking the accommodation described above, including with respect to the following:

1. The Departments ask objecting organizations with insured plans to indicate whether the alternative procedure described above would resolve their RFRA objections to the accommodation. If it would not resolve a particular organization's RFRA objection, the Departments ask the organization to indicate whether its RFRA objection could be resolved by any procedure(s) or system(s) in which the organization's issuer provides contraceptive coverage to the women enrolled in the organization's health plan, and, if so, describe the procedure(s) or system(s) with specificity.

2. The Supreme Court's supplemental briefing order appears to contemplate that, in requesting insurance coverage that excludes contraceptive coverage, an employer would inform its issuer that it objects to providing contraceptive coverage "on religious grounds."[13] The Departments ask objecting organizations to indicate whether they would have any RFRA objection to informing their issuers that they object to providing contraceptive coverage "on religious grounds," or to a further requirement that the request by an eligible organization[14] to its issuer be made in writing, or to a further requirement that the request be made via a particular form.

3. The government's supplemental brief explained that eliminating the written notification requirement in the existing accommodation could impose additional burdens on objecting employers, issuers, and regulators. Gov't Supp. Br. 8–10, 14–15. The Departments seek comment on the extent of those burdens and what steps could be taken

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[9] Consistent with the Supreme Court's decision in *Zubik,* the Departments seek to determine whether changes to the existing accommodation could resolve the pending RFRA claims brought by objecting employers. The Supreme Court separately specified that, while the RFRA litigation remains pending, "the Government may not impose taxes or penalties on [the plaintiffs] for failure to provide the . . . notice" required under the existing accommodation regulations. *Zubik,* 136 S. Ct. at 1561. At the same time, the Court also emphasized that "[n]othing in [its] opinion, or in the opinions or orders of the courts below, is to affect the ability of the Government to ensure that women covered by [plaintiffs'] health plans 'obtain, without cost, the full range of FDA approved contraceptives.'" *Id.* at 1560–1561 (quoting *Wheaton College* v. *Burwell,* 134 S. Ct. 2806, 2807 (2014)). As such, those interim matters are not within the scope of this RFI.

[10] *Zubik,* 2016 WL 1203818, at *2.

[11] *Id.*

[12] The government's supplemental brief is available at *https://www.justice.gov/osg/brief/zubik-v-burwell-0.* The government's supplemental reply brief is available at *https://www.justice.gov/osg/brief/zubik-v-burwell-1.*

[13] *Zubik,* 2016 WL 1203818, at *2.

[14] An eligible organization, which may seek the accommodation based on its sincerely held religious objection to providing contraceptive coverage, is defined at 26 CFR 54.9815–2713A(a), 29 CFR 2590.715–2713A(a), and 45 CFR 147.131(b).

to mitigate them. The Departments ask health insurance issuers, as well as other commenters, to indicate whether it is feasible for issuers to implement the accommodation without the written notification requirement.

4. What impact would the alternative procedure described above have on the ability of women enrolled in group health plans established by objecting employers to receive seamless coverage for contraceptive services?

B. Other Approaches With Respect to Insured Plans Described in the Supplemental Briefing

In their supplemental brief, the plaintiffs in *Zubik* and the consolidated cases proposed additional modifications to the existing accommodation for insured plans, beyond those described in the Supreme Court's supplemental briefing order and discussed above. As in the alternative described above, the *Zubik* plaintiffs proposed that when an eligible employer with an insured plan requests insurance coverage that excludes contraceptive coverage to which the employer objects on religious grounds, the employer's issuer should be required to provide the required coverage separately. However, the *Zubik* plaintiffs further proposed that the separate coverage provided by the issuer should differ from the separate coverage required under the existing accommodation in two respects. First, the *Zubik* plaintiffs proposed that the issuer be required to offer women the opportunity to enroll in contraceptive-only insurance policies, rather than the issuer providing separate direct payments for contraceptive services. Second, the *Zubik* plaintiffs proposed that the affected women should be required to take affirmative steps to enroll in those contraceptive-only policies, rather than being automatically eligible for payments by the issuer for contraceptive services. Pet. Supp. Br. 3–12.[15]

The Departments seek comments on this approach, including with respect to the following:

1. The Departments ask objecting organizations with insured plans to indicate whether this alternative procedure would resolve their RFRA objections to the accommodation.

2. What impact would this approach have on the ability of women enrolled in group health plans established by objecting employers to receive seamless coverage for contraceptive services?

3. Is this approach feasible for health insurance issuers?

4. Relying on the record developed in the prior rulemaking proceedings, the government's supplemental reply brief in *Zubik* explained that contraceptive-only insurance policies would be inconsistent with state laws regulating insurance and that an affirmative enrollment requirement would impose a barrier to access to preventive services. Gov't Supp. Reply Br. 3–6. The Departments seek further comment on those issues in this RFI.

5. Are there alternative procedure(s) or systems (without relying on contraceptive-only policies or imposing an affirmative enrollment requirement) that would resolve objecting organizations' RFRA objection to the accommodation? If so, please describe the procedure(s) or system(s) with specificity.

C. Self-Insured Plans

The Supreme Court's supplemental briefing order in *Zubik* addressed only employers with "insured plans." [16] In its supplemental brief, the government described the operation of the accommodation for self-insured plans and explained that an alternative process like the one the Court posited for insured plans could not work for the many employers with self-insured plans:

> If an employer has a self-insured plan, the statutory obligation to provide contraceptive coverage falls only on the plan—there is no insurer with a preexisting duty to provide coverage. Accordingly, to relieve self-insured employers of any obligation to provide contraceptive coverage while still ensuring that the affected women receive coverage without the employer's involvement, the accommodation establishes a mechanism for the government to designate the employer's TPA as a 'plan administrator' responsible for separately providing the required coverage under [ERISA]. That designation is made by the government, not the employer, and the employer does not fund, control, or have any other involvement with the separate portion of the ERISA plan administered by the TPA.
>
> The government's designation of the TPA must be reflected in a written plan instrument. To satisfy that requirement, the accommodation relies on either (1) a written designation sent by the government to the TPA, which requires the government to know the TPA's identity, or (2) the self-certification form, which the regulations treat as a plan instrument in which the government designates the TPA as a plan administrator. There is no mechanism for requiring TPAs to provide separate contraceptive coverage without a plan instrument; self-insured employers could not opt out of the contraceptive-coverage requirement by simply informing their TPAs that they do not want to provide coverage for contraceptives. Gov't Supp. Br. 16–17 (citations omitted).

The *Zubik* plaintiffs also stated that an arrangement like the one posited in the Supreme Court's briefing order for insured plans could not work for self-insured plans. See Pet. Supp. Br. 16–17.

Although the Departments have not identified any viable alternative to the existing accommodation for self-insured plans, they seek comment on any possible modifications to the accommodation for self-insured plans, including self-insured church plans that would resolve objecting organizations' RFRA objections while still providing seamless access to coverage, including with respect to the following:

1. Are any reasonable alternative means available under existing law by which the Departments could ensure that women enrolled in self-insured plans maintained by objecting employers receive separate contraceptive coverage that is not contracted, arranged, paid, or referred for by the objecting organization but that is provided through the same third party administrators that administer the rest of their health benefits?

2. The Departments ask objecting organizations with self-insured plans to indicate whether their RFRA objections to the existing accommodation could be resolved by any alternative procedure or system in which the objecting organization's third party administrator provides contraceptive coverage to the women enrolled in the organization's health plan, and, if so, to describe the procedure(s) or system(s) with specificity.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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[15] Petitioners' supplemental brief is available at *http://www.scotusblog.com/wp-content/uploads/2016/04/Non-profits-response-to-Zubik-order-4-12-16.pdf.* Petitioners' supplemental reply brief is available at *http://www.scotusblog.com/wp-content/uploads/2016/04/Zubik-order-non-profits-reply-brief-4-20-161.pdf.*

[16] *Zubik,* 2016 WL 1203818, at *2.

Signed at Washington, DC, this 18th day of July, 2016.

Victoria A. Judson,

Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service, Department of the Treasury.

Signed this 18th day of July, 2016.

Robert J. Neis,

Benefits Tax Counsel, Department of the Treasury.

Signed this 18th day of July, 2016.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration Department of Labor.

Dated: July 14, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 15, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–17242 Filed 7–21–16; 8:45 am]

BILLING CODE 4120–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0306; A–1–FRL–9949–31–Region 1]

Air Plan Approval; Rhode Island; Correction, Administrative and Miscellaneous Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This SIP revision includes fifteen revised Rhode Island Air Pollution Control Regulations. These regulations have been previously approved into the Rhode Island SIP and the revisions to these regulations are mainly administrative in nature, but also include technical corrections and a few substantive changes to several of the rules. In addition, EPA is proposing a correction to the Rhode Island SIP to remove Rhode Island's odor regulation because it was previously erroneously approved into the SIP. The intended effect of this action is to propose to approve Rhode Island's fifteen revised regulations into the Rhode Island SIP and correct the Rhode Island SIP by removing Rhode Island's odor regulation. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before August 22, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0306 at *http://www.regulations.gov,* or via email to *mcdonnell.ida@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912, telephone 617–918–1656, fax 617–918–0656, email *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: July 5, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–17183 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 81, No. 141

Friday, July 22, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Information Collection Request; Registration Form To Request Electronic Access Code Information

AGENCY: Office of the Chief Information Officer, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), this notice announces and requests comments on the intention of the Office of the Chief Information Officer (OCIO) to request approval for the continuation of and changes to the U.S. Department of Agriculture (USDA) Registration Form to Request Electronic Access Code information collection to allow USDA customers to securely and confidently share data and receive services electronically. Authority for obtaining information from customers is included in the Freedom to E-File Act, the Electronic Signatures in Global and National Commerce Act (E-SIGN, the E-Government Act of 2002. Customer information is collected through the USDA eAuthentication Service (eAuth), located at *https://www.eauth.usda.gov.* The USDA eAuth service provides both public citizens as well as federal government employees with a secure single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA's eAuth Application service obtains customer information through an electronic self-registration process provided through the eAuth Web site. This voluntary online self-registration process and online identity proofing service (either in person at a USDA Service Center or online with national credit bureaus) enables USDA customers, as well as employees, to obtain accounts as authorized users that will provide single sign-on capability, self-registration, and account management to access USDA Web applications and services via the Internet.

DATES: Comments on this notice must be received on or before September 20, 2016 to be assured of consideration.

ADDRESSES:

- *Federal eRulemaking Portal*: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Interested persons are invited to submit comments concerning this information collection to Adam Zeimet, 2150 Centre Avenue, Building A-Suite 350, Fort Collins, Colorado 80526. Fax comments should be sent to the attention of Adam Zeimet at fax number (970) 295–5528.

FOR FURTHER INFORMATION CONTACT: Adam Zeimet by telephone at (970) 295–5678, or via email at *Adam.Zeimet@usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of USDA–OCIO-Client Technology Services-Identity Access Branch (Identity, Credential, and Access Management Program) to request approval for an existing collection.

Title: USDA Registration Form to Request Electronic Access Code.

OMB Number: 0503–0014.

Expiration Date of Approval: 12/31/2016.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The USDA OCIO has developed eAuthentication Application Services as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a one-time electronic self-registration to obtain an eAuth account for each USDA customer desiring access to on-line services or applications that require user authentication. USDA customers can self-register for an account at a Level of Assurance (LOA) 1 or 2 (and in the future LOA 3) as defined by OMB Memorandum M–04–04 and National Institute of Standards and Technology Special Publication 800–63–2 (or superseding publications). Level of Assurance refers to a level of confidence in the user's claimed identity. An account at LOA 1 provides users with limited access to USDA Web site portals and applications that have minimal security requirements. An account at LOA 2 enables users to conduct official electronic business transactions via the Internet, enter into a contract with the USDA, and submit forms electronically via the Internet to USDA agencies. Due to the increased risk associated with these types of transactions, the identity of customers must be verified through a process called ‘‘identity proofing’’, in addition to completing an electronic self-registration. Identity proofing can be accomplished for customers in two ways: (1) By visiting a local registrant authority at a USDA Service Center; or (2) Through an online identity proofing service implemented with an integration with a National Credit Bureau. The new on-line identity proofing service will provide registrants with a more efficient mechanism to have their identity proofed. The on-line identity proofing requires responses to at least four randomly selected identity questions that are verified by a national credit bureau identity proofing service in an automated interface. The USDA OCIO is also developing a solution to provide accounts for public citizens at LOA 3, which leverages the same self-registration and identity proofing, but also incorporates strong multi-factor authentication credentials for access to secure, high risk, or sensitive systems, if authorized. Once an account is activated, customers may use the associated credential to access USDA resources that are protected by eAuth.

Estimate of Burden: Public reporting burden for this collection of information is estimated to take eight (8) minutes to complete the self-registration process for a LOA 1 account. LOA 2 (and in the future, LOA 3) account registration is estimated to be completed in one hour 40 minutes when travelling to a USDA Service Center to visit a local registration authority (expected to be approximately 30% of the registrants), or ten (10) minutes when using the on-line identity proofing service (expected to be approximately 70% of the registrants).

Respondents: Individual USDA Customers.

Estimated Number of Respondents per Level:

- LOA 1 Account: 114,256.
- LOA 2 Account: 17,848.
  - ○ In Person ID Proofing (subset of LOA 2): 5,354.
  - ○ Online\Remote ID Proofing (subset of LOA 2): 12,494.

Estimated Total Number of Respondents: 132,104.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 26,239.8 hours.

Comments are invited on (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of the information on those who respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods. Copies of the information collection may be obtained from Mr. Zeimet by calling or emailing your request to the contact information above in the **FOR FURTHER INFORMATION** section. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 11, 2016.

Jonathan Alboum,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 2016–16817 Filed 7–21–16; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0024]

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Food

AGENCY: Office of the Deputy Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on September 22, 2016. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 23rd Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) of the Codex Alimentarius Commission (Codex), taking place in Houston, Texas, October 17–21, 2016. The Deputy Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 23rd Session of the CCRVDF and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, September 22, 2016, from 1:00 p.m.–4:00 p.m.

ADDRESSES: The public meeting will take place at the USDA, Jamie L. Whitten Building, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 23rd Session of the CCRVDF will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Brandi Robinson, U.S. Delegate to the 23rd Session of the CCRVDF, invites U.S. interested parties to submit their comments electronically to the following email address: *Brandi.Robinson@fda.hhs.gov.*

Call-In-Number

If you wish to participate in the public meeting for the 23rd Session of the CCRVDF by conference call, please use the following call-in-number:

Call-in-Number: 1–888–844–9904.

The participant code will be posted on the following Web page: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

Registration

Attendees may register to attend the public meeting by emailing *uscodex@fsis.usda.gov* by September 16, 2016. Early registration is encouraged as it will expedite entry into the building. The meeting will be held in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone.

FOR FURTHER INFORMATION ABOUT THE 23RD SESSION OF THE CCRVDF CONTACT: Brandi Robinson, ONADE International Coordinator, Center for Veterinary Medicine, U.S. Food and Drug Administration, 7500 Standish Place, HFV–100, Rockville, MD 20855. Telephone: (240) 402–0645, Email: *Brandi.Robinson@fda.hhs.gov.*

For Further Information About the Public Meeting Contact

Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., South Agriculture Building, Room 4861, Washington, DC 20250. Telephone: (202) 690–4042, Fax: (202) 720–3157, Email: *Kenneth.Lowery@fsis.usda.gov*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization (FAO/WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCRVDF is responsible for determining priorities for the consideration of residues of veterinary drugs in foods, recommending maximum levels of such substances, developing codes of practice as may be required, and considering methods of sampling and analysis for the determination of veterinary drug residues in foods.

The Committee is hosted by the United States.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 23rd Session of the CCRVDF will be discussed during the public meeting:

- Matters referred to the Committee by Codex or its subsidiary bodies;
- Matters of interest arising from the FAO/WHO and from the 81st Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA);
- Report of the World Organisation for Animal Health activities, including the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products;
- Proposed draft Risk Management Recommendations (RMR) for gentian violet at Step 3;
- Proposed draft Maximum Residue Limits (MRLs) for ivermectin (cattle muscle) and lasalocid sodium (chicken, turkey, quail, and pheasant kidney, liver, muscle, skin and fat) at Step 4;
- Proposed draft MRLs for ivermectin (cattle fat, kidney, muscle),

teflubenzuron (salmon fillet, muscle) and zilpaterol hydrochloride (cattle fat, kidney, liver, muscle) at Step 3;

- Discussion paper on the unintended presence of residues of veterinary drugs in food commodities resulting from the carry-over of drug residues into feed;
- Discussion paper on the establishment of a rating system to establish priority for the CCRVDF work;
- Global survey to provide information to the CCRVDF to move compounds from the database on countries' needs for MRLs to the JECFA Priority List (Report of Environmental Working Group) and Database on countries' needs for MRLs;
- Draft priority list of veterinary drugs requiring evaluation or re-evaluation by JECFA; and
- Other Business & Future Work.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat before the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the September 22, 2016, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 23rd Session of the CCRVDF, Brandi Robinson (see **ADDRESSES**). Written comments should state that they relate to the activities of the 23rd Session of the CCRVDF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on July 19, 2016.

Paulo Almeida,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2016–17377 Filed 7–21–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will meet in Frenchtown, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/lolo/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Wednesday, August 3, 2016, at 6 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Frenchtown Rural Fire Station 1, 16875 Marion Street, Frenchtown, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ninemile Ranger District.

FOR FURTHER INFORMATION CONTACT: Sari Lehl, RAC Coordinator, by phone at 406–626–5201 or via email at *slehl@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for RAC project proposal presentations.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 1, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Sari Lehl, RAC Coordinator, Ninemile Ranger District, 20325 Remount Road, Huson, Montana 59846; by email to *slehl@fs.fed.us,* or via facsimile to 406–626–5201.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

All reasonable accommodation requests are managed on a case by case basis.

Dated: June 14, 2016.

Erin Phelps,

District Ranger.

[FR Doc. 2016–17361 Filed 7–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Assessment Report of Ecological, Social and Economic Conditions, Trends and Sustainability for the Ashley National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the assessment phase of the forest plan revision for the Ashley National Forest.

SUMMARY: The Ashley National Forest (Forest), located in northeastern Utah and southwestern Wyoming, is initiating the first phase of the forest planning process pursuant to the National Forest System Land Management Planning rule (36 CFR part 219). This process will result in a revised forest land management plan (forest plan) which provides strategic direction for management of resources on the Ashley National Forest for the next ten to fifteen years. The first phase of the planning process involves assessing ecological, social and economic conditions and trends in the planning area and documenting the findings in an assessment report.

The assessment phase is just beginning on the Ashley National Forest and interested parties are invited to contribute to the development of the assessment. The Forest will be hosting public meetings to explain the revision process and invite the public to share information relevant to the assessment, including sources of existing information and local knowledge of current conditions and trends in the natural resources, social values, and goods and services produced by lands within the Ashley National Forest.

DATES: Public meetings to discuss development of the assessment will be held in July and August 2016. Dates, locations and agendas will be posted on the Forest Web site (*www.fs.usda.gov/goto/AshleyForestPlan*) and mailed to individuals and organizations on our mailing list. Another round of meetings is planned for November-December 2016, when a draft assessment is ready for public review. We expect to complete the assessment in the spring of 2017. Following completion of the assessment, the Forest will initiate procedures pursuant to the National Environmental Policy Act (NEPA) to prepare and evaluate a revised forest plan.

ADDRESSES: Written correspondence can be sent to: Ashley National Forest, Attn: Forest Plan, 355 N. Vernal Avenue, Vernal, UT 84078; or emailed to *AshleyForestPlan@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Kathy Paulin, Forest Plan Revision Team Leader at the mailing address above; or call 435–781–5118. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday. More information on our plan revision process is available on the Forest's planning Web site at *www.fs.usda.gov/goto/AshleyForestPlan.* You may also contact us by email at: *AshleyForestPlan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop and periodically revise a forest plan. The procedures for doing this are in federal regulation (''Planning Rule,'' 36 CFR 219) and in Forest Service directives. Forest plans provide strategic direction for managing forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time.

Under the Planning Rule, an assessment of ecological, social, and economic conditions and trends in the planning area is the first phase of a 3-phase planning process (36 CFR 219.6). The second phase is guided, in part, by the National Environmental Policy Act (NEPA). It includes preparation of a draft revised forest plan, one or more alternatives to the draft plan, and a draft environmental impact statement (DEIS) for public review and comment. This is followed by a final environmental impact statement (FEIS) and draft decision. The draft decision is subject to the objection procedures of 36 CFR part 219, subpart B, before it can be finalized. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plan.

This notice announces the start of the Ashley National Forest's assessment process. The assessment will rapidly evaluate existing information about relevant ecological, economic, cultural and social conditions, trends and sustainability and their relationship to the current forest plan within the context of the broader landscape. The assessment does not include any decisions or require any actions on the ground. Its purpose is to provide a solid base of information that will be used to identify preliminary needs for change in the current forest plan, and to inform development of a revised plan.

With this notice, the Ashley National Forest invites other governments, non-governmental parties, and the public to contribute to assessment development. The intent of public participation during this phase is to identify as much relevant information as possible to inform the plan revision process. We also encourage contributors to share their concerns and perceptions of risk to social, economic, and ecological systems in or connected to the planning area.

As public engagement opportunities are scheduled, public announcements will be made and information will be posted on the Forest's Web site: *www.fs.usda.gov/goto/AshleyForestPlan.* To contribute information or ask to be added to our mailing list, please call 435–781–5118 or email *AshleyForestPlan@fs.fed.us.*

Responsible Official: The responsible official for the revision of the land management plan for the Ashley National Forest is the Forest Supervisor, John R. Erickson, Ashley National Forest, 355 N. Vernal Avenue, Vernal, UT 84078.

Dated: July 15, 2016.

John R. Erickson,

Forest Supervisor.

[FR Doc. 2016–17350 Filed 7–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne and Mariposa Counties Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne and Mariposa Counties Resource Advisory Committee (RAC) will meet in Sonora, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of

the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held on August 22, 2016, from 12 p.m. to 3 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Stanislaus National Forest Supervisor's Office, Tuolumne Room, 19777 Greenley Road, Sonora, California. A phone line will be available to attend the meeting via conference call; for the conference line information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Stanislaus National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Beth Martinez, RAC Coordinator, by phone at 209–532–3671 extension 321 or via email at *bethmartinez@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Vote on project proposals; and
2. Make recommendations to the Forest Service from the Tuolumne and Mariposa Counties RAC.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by at least a week in advance to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Beth Martinez, RAC Coordinator, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; by email to *bethmartinez@fs.fed.us,* or via facsimile to Attention: Beth Martinez at 209–533–1890.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 14, 2016.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2016–17372 Filed 7–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne and Mariposa Counties Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne and Mariposa Counties Resource Advisory Committee (RAC) will meet in Sonora, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held on August 15, 2016, from 12 p.m. to 3 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Stanislaus National Forest Supervisor's Office, Tuolumne Room, 19777 Greenley Road, Sonora, California. A phone line will be available to attend the meeting via conference call; for the conference line information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Stanislaus National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Beth Martinez, RAC Coordinator, by phone at 209–532–3671 extension 321 or via email at *bethmartinez@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for project presentations.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by at least a week in advance to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Beth Martinez, RAC Coordinator, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; by email to *bethmartinez@fs.fed.us,* or via facsimile to Attention: Beth Martinez at 209–533–1890.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 14, 2016.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2016–17373 Filed 7–21–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gogebic Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gogebic Resource Advisory Committee (RAC) will meet in

Watersmeet, Michigan. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvaAAC.*

DATES: The meeting will be held on August 24, 2016, from 9:30 a.m. to 4:00 p.m. Central Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Watersmeet and Iron River Ranger District Office, E23979 US 2 East (Corner of US 2 and Hwy. 45), Watersmeet, Michigan.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ottawa National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC Coordinator, by phone at 906–932–1330 ext. 328 or via email at *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Identify new RAC committee members,
2. Review and approve the RAC's operating guidelines,
3. Elect a new chairperson, and
4. Review and recommend projects for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 12, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Attention: Lisa Klaus, RAC Coordinator, Ottawa National Forest Supervisor's Office, E6248 US Hwy. 2, Ironwood, Michigan 49938; by email to *lklaus@fs.fed.us,* or via facsimile to 906–932–0122.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: July 15, 2016.

Linda L. Jackson,

Forest Supervisor.

[FR Doc. 2016–17357 Filed 7–21–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New York Advisory Committee to the Commission will convene at 12:30 p.m. (EDT) on Wednesday, August 3, 2016 at the Midtown Conference Center of Sullivan & Cromwell, located at 535 Madison Ave., New York, NY 10022. The purpose of the planning meeting is for staff to conduct an orientation for new and returning members and for the Advisory Committee to discuss project planning for its new appointment term.

Persons needing accessibility services should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting. Please contact Evelyn Bohor at *eroA Tisccr.gov.*

Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, September 5, 2016. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *eroATusccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://database.faca.gov/committee/meetings.aspx?cid=265* and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

I. Welcome and Introductions
  —Rollcall
  Planning Meeting
  —Discuss Project Planning
II. Other Business
  Adjournment

DATES: Wednesday, August 3, 2016 at 12:00 p.m. (EDT).

ADDRESSES: The meeting will be held at: Sullivan & Cromwell, Midtown Conference Center, 535 Madison Ave., New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, DFO, *ero@usccr.gov,* 202–376–7533.

Dated: July 19, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–17354 Filed 7–21–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Alaska State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

DATES: Monday, August 1, 2016.

TIME: 12:00 p.m.–1:00 p.m. (Alaska Time).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a webinar meeting of the Alaska State Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Alaska Time)

Monday, August 1, 2016 with the Alaska Division of Elections regarding the status of recent settlements on voting access for limited English proficient (LEP) persons, as well as the impact of recent pre-clearance changes to the Voting Rights Act of 1965. This meeting is available to the public through the following toll-free call-in number: Toll-Free Phone Number: 888–523–1228; when prompted, please provide conference ID number: 4919191.

Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments within thirty (30) days of the meeting. The comments must be received in the Western Regional Office of the Commission by Monday, August 29, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angela French-Bell, Regional Director, Western Regional Office, at *abell@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=234.* Please click on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda for August 1, 2016

I. Introductory Remarks
II. Discussion with Alaska Division of Elections
III. Public Comment
IV. Adjournment

This meeting is available to the public through the following toll-free call-in number: Toll-Free Phone Number: 888–523–1228; when prompted, please provide conference ID number: 4919191.

FOR FURTHER INFORMATION CONTACT: Angela French-Bell, DFO, at (213) 894–3437 or *abell@usccr.gov.*

Dated: July 18, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–17260 Filed 7–21–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada State Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

DATES: Friday, July 29, 2016.

TIME: 1:00 p.m.–2:30 p.m. (Pacific Time).

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will be held on Friday, July 29, 2016, at the Department of Employment, Training and Rehabilitation, 2800 East St. Louis Avenue, Conference Room C, Las Vegas, NV 89104. The meeting is scheduled to begin at 1:00 p.m. and adjourn at approximately 2:30 p.m. The purpose of the meeting is for the Committee to consider and discuss potential topics for their FY17 civil rights project.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments within thirty (30) days of the meeting. The comments must be received in the Western Regional Office of the Commission by Monday, August 29, 2016. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments may do so by sending them to Angela French-Bell, Regional Director, Western Regional Office, at *abell@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=261.*

Please click on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Western Regional Office at the above email or street address.

Agenda for July 29, 2016

I. Welcome
II. Introductory Remarks
III. Orientation
IV. Discussion Regarding Potential FY17 Topics
V. Public Comment
VI. Adjournment

FOR FURTHER INFORMATION CONTACT: Angela French-Bell, DFO, at (213) 894–3437 or *abell@usccr.gov.*

Dated: July 18, 2016.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2016–17261 Filed 7–21–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 160713610–6610–01]

RIN 0625–XC020

Cost Recovery Fee Schedule for the EU–U.S. Privacy Shield Framework

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of implementation of a cost recovery program fee with request for comments.

SUMMARY: Consistent with the guidelines in OMB Circular A–25, the U.S. Department of Commerce's International Trade Administration (ITA) is implementing a cost recovery program fee to support the operation of the EU–U.S. Privacy Shield Framework (Privacy Shield), which will require that U.S. organizations pay an annual fee to ITA in order to participate in the Privacy Shield. The cost recovery program will support the administration and supervision of the Privacy Shield program and support the provision of

Privacy Shield-related services, including education and outreach. The Privacy Shield fee schedule will become effective on August 1, 2016, when ITA will begin accepting self-certifications. ITA also is providing the public with the opportunity to comment on the fee schedule. ITA will reassess the fee schedule after the first year of implementation and, in accordance with OMB Circular A–25, at least every two years thereafter.

DATES: This fee schedule is effective August 1, 2016. Comments must be received by August 22, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: www.Regulations.gov.* The identification number is ITA–2016–0007.
- Postal Mail/Commercial Delivery to Grace Harter, Department of Commerce, International Trade Administration, Room 20001, 1401 Constitution Avenue NW., Washington, DC and reference "Privacy Shield Fee Structure, ITA–2016–0007" in the subject line.

Instructions: You must submit comments by one of the above methods to ensure that we receive the comments and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Commerce Department will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/ITA-2016-0002.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the EU–U.S. Privacy Shield Framework should be directed to David Ritchie or Grace Harter, Department of Commerce, International Trade Administration, Room 20001, 1401 Constitution Avenue NW., Washington, DC, tel. 202–482–4936 or 202–482–1512 or via email at *privacyshield@trade.gov.* Additional information on ITA fees is available at *trade.gov/fees.*

SUPPLEMENTARY INFORMATION:

Background

Consistent with the guidelines in OMB Circular A–25 (*https://www.whitehouse.gov/omb/circulars_a025*), federal agencies are responsible for implementing cost recovery program fees.

The role of ITA is to strengthen the competitiveness of U.S. industry, promote trade and investment, and ensure fair trade through the rigorous enforcement of our trade laws and agreements. ITA works to promote privacy policy frameworks to facilitate the flow of data across borders to support international trade.

The United States and the European Union (EU) share the goal of enhancing privacy protection but take different approaches to protecting personal data. Given those differences, the Department of Commerce (DOC) developed the Privacy Shield in consultation with the European Commission, as well as with industry and other stakeholders, to provide organizations in the United States with a reliable mechanism for personal data transfers to the United States from the European Union while ensuring the protection of the data as required by EU law.

In July 2016, the European Commission approved the EU–U.S. Privacy Shield Framework. The published Privacy Shield Principles are available at: [insert link]. The DOC has issued the Privacy Shield Principles under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512). ITA will administer and supervise the Privacy Shield, including by maintaining and making publicly available an authoritative list of U.S. organizations that have self-certified to the DOC. U.S. organizations submit information to ITA to self-certify their compliance with Privacy Shield. ITA will accept self-certification submissions beginning on August 1, 2016. At a future date, ITA will publish for public notice and comment information collections as described in the Privacy Shield Framework consistent with the Paperwork Reduction Act.

U.S. organizations considering self-certifying to the Privacy Shield should review the Privacy Shield Framework. In summary, in order to enter the Privacy Shield, an organization must (a) be subject to the investigatory and enforcement powers of the Federal Trade Commission (FTC) or the Department of Transportation; (b) publicly declare its commitment to comply with the Principles through self-certification to the DOC; (c) publicly disclose its privacy policies in line with the Principles; and (d) fully implement them.

Self-certification to the DOC is voluntary; however, an organization's failure to comply with the Principles after its self-certification is enforceable under Section 5 of the Federal Trade Commission Act prohibiting unfair and deceptive acts in or affecting commerce (15 U.S.C. 45(a)) or other laws or regulations prohibiting such acts.

ITA is implementing a cost recovery program to support the operation of the Privacy Shield, which will require U.S. organizations to pay an annual fee to ITA in order to participate in the program. The cost recovery program will support the administration and supervision of the Privacy Shield program and support the provision of Privacy Shield-related services, including education and outreach. The fee a given organization will be charged will be based on the organization's annual revenue:

Fee Schedule:

EU–U.S. PRIVACY SHIELD FRAMEWORK COST RECOVERY PROGRAM

Organization's annual revenue	Annual fee
$0 to $5 million	$250
Over $5 million to $25 million	650
Over $25 million to $500 million	1,000
Over $500 million to $5 billion	2,500
Over $5 billion	3,250

Organizations will have additional direct costs associated with participating in the Privacy Shield. For example, Privacy Shield organizations must provide a readily available independent recourse mechanism to hear individual complaints at no cost to the individual. Furthermore, organizations will be required to pay contributions in connection with the arbitral model, as described in Annex I to the Principles.

Method for Determining Fees

ITA collects, retains, and expends user fees pursuant to delegated authority under the Mutual Educational and Cultural Exchange Act as authorized in its annual appropriations acts.

The EU–U.S. Privacy Shield Framework was developed to provide organizations in the United States with a reliable mechanism for personal data transfers that underpin the trade and investment relationship between the United States and the EU.

Fees are set taking into account the operational costs borne by ITA to administer and supervise the Privacy Shield program. The Privacy Shield program will require a significant commitment of resources and staff. The Privacy Shield Framework includes commitments from ITA to:

- Maintain a Privacy Shield Web site;
- verify self-certification requirements submitted by organizations to participate in the program;
- expand efforts to follow up with organizations that have been removed from the Privacy Shield List;
- search for and address false claims of participation;
- conduct periodic compliance reviews and assessments of the program;
- provide information regarding the program to targeted audiences;
- increase cooperation with EU data protection authorities;
- facilitate resolution of complaints about non-compliance;
- hold annual meetings with the European Commission and other authorities to review the program, and
- provide an update of laws relevant to Privacy Shield.

In setting the Privacy Shield fee schedule, ITA determined that the services provided offer special benefits to an identifiable recipient beyond those that accrue to the general public. ITA calculated the actual cost of providing its services in order to provide a basis for setting each fee. Actual cost incorporates direct and indirect costs, including operations and maintenance, overhead, and charges for the use of capital facilities. ITA also took into account additional factors, including adequacy of cost recovery, affordability, and costs associated with alternative options available to U.S. organizations for the receipt of personal data from the EU.

ITA is establishing a 5-tiered fee schedule that will promote the participation of small organizations in Privacy Shield. A multiple-tiered fee schedule allows ITA to offer the organizations with lower revenue a lower fee. In setting the 5 tiers, ITA considered, in conjunction with the factors mentioned above: (1) The Small Business Administration's guidance on identifying SMEs in various industries most likely to participate in the Privacy Shield, such as computer services, software and information services; (2) the likelihood that small companies would be expected to receive less personal data and thereby use fewer government resources; and (3) the likelihood that companies with higher revenue would have more customers whose data they process, which would use more government resources dedicated to administering and overseeing Privacy Shield. For example, if a company holds more data it could reasonably produce more questions and complaints from consumers and the European Union's Data Protection Authorities (DPAs). ITA has committed to facilitating the resolution of individual complaints and to communicating with the FTC and the DPAs regarding consumer complaints. Lastly, the fee increases between the tiers are based in part on projected program costs and estimated participation levels among companies within each tier.

Conclusion

Based on the information provided above, ITA believes that its Privacy Shield cost recovery fee schedule is consistent with the objective of OMB Circular A–25 to "promote efficient allocation of the nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as the cost to the U.S. Government of providing the special benefits . . ." OMB Circular A–25(5)(b). ITA is providing the public with the opportunity to comment on the fee schedule, and it will consider these comments when it reassesses the fee schedule. ITA will reassess the fee schedule after the first year of implementation and, in accordance with OMB Circular A–25, at least every two years thereafter.

Dated: July 20, 2016.

Edward M. Dean,

Deputy Assistant Secretary for Services, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2016–17508 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Determination Pursuant to a Final Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2010, the United States Court of International Trade ("CIT") sustained the remand redetermination made by the Department of Commerce ("Department") pursuant to the CIT's remand of the final determination in the antidumping duty investigation on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC"). This case arises out of the Department's final determination in the antidumping duty ("AD") investigation on OTR tires from the PRC. See Certain New Pneumatic Off-The-Road-Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008), as amended by Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order, 73 FR 51624 (September 4, 2008) (collectively, "Final Determination").

The Department notified the public that the final CIT judgment (See GPX Int'l Tire Corp. v. United States, Consol. Ct. No. 08–00285, Slip Op. 10–112 (Ct. Int'l Trade October 1, 2010) ("GPX III") in this case was not in harmony with the Department's final affirmative determination in the AD investigation of OTR tires from the PRC on October 12, 2010. See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony, 75 FR 62504 (October 12, 2010) ("2010 Timken Notice"). As there is now a final and conclusive decision in this case, the Department is amending its final determination with respect to the antidumping duty rate calculated for the separate rate companies.

DATES: Effective March 23, 2015.

FOR FURTHER INFORMATION CONTACT: Andrew Medley, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

In July 2008, the Department published a final determination in which it found that OTR tires from the PRC are being, or are likely to be, sold in the United States at less-than-fair-value ("LTFV").[1] As part of the *Final Determination*, the Department calculated a margin for the separate-rate respondents of 12.91 percent.[2] Starbright Tire Co., Ltd. ("Starbright"), its importer GPX International Tire Corporation ("GPX"), petitioners Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied and Industrial Service Workers International Union, AFL–CIO–CLC (collectively, "Titan"), and domestic interested party Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, "Bridgestone"), each timely challenged various aspects of the *Final Determination* to the CIT. The antidumping duty case was then consolidated with the companion countervailing duty case at the CIT. With regard to the antidumping duty case, among the issues raised before the Court was the valuation of wire input consumed by two of the respondent companies, Starbright and Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC"), under the factors of production methodology to calculate normal value in a non-market economy country pursuant to section 773(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act").

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[1] *See Final Determination.*

On August 4, 2010, pursuant to the Department's request for a voluntary remand, the CIT remanded the wire input valuation issue to the Department for reconsideration or further explanation.[3] In a remand redetermination filed on September 3, 2010, the Department determined that record evidence supported using a different surrogate value for the wire input consumed by Starbright and TUTRIC in the production of OTR tires.[4] As a result of this change, the weighted-average dumping margin calculated for subject merchandise produced by Starbright and exported by Starbright/GPX changed from 29.93 percent to 31.79 percent, the weighted average dumping margin calculated for subject merchandise produced and exported by TUTRIC changed from 8.44 percent to 10.08 percent, and the weighted-average dumping margin calculated for separate rate companies changed from 12.91 percent to 13.92 percent.[5] The CIT affirmed the Department's remand redetermination on October 1, 2010.[6] On October 12, 2010, the Department notified the public that the final CIT judgment in this case was not in harmony with the Department's final affirmative determination in the AD investigation of OTR tires from the PRC.[7] Subsequently, domestic litigation over issues pertaining to the consolidated countervailing duty case continued.[8] On March 13, 2015, the United States Court of Appeals for the Federal Circuit ("Federal Circuit") issued a final and conclusive decision in this case, which no party appealed.[9] Because there is now a final and conclusive court decision in this case, the Department is amending the final determination for the separate rate respondents.

Amended Final Determination

Since the *Final Determination,* the Department has established a new cash deposit rate for TUTRIC and for Starbright.[10] Therefore, this amended final determination does not change TUTRIC's or Starbright's cash deposit rates. Because there is now a final and conclusive court decision with respect to the *Final Determination*, the revised cash deposit rate for the separate rate companies is 13.92 percent. For those separate-rate companies that do not have a superseding cash deposit rate identified in the table below, the Department will issue revised cash deposit instructions to U.S. Customs and Border Protection, adjusting the cash deposit rate for the below separate-rate companies to 13.92 percent, effective March 23, 2015.[11]

Exporter	Producer	Weighted-average margin (percent)
Aeolus Tyre Co., Ltd	Aeolus Tyre Co., Ltd	13.92
Double Happiness Tyre Industries Corp., Ltd	Double Happiness Tyre Industries Corp., Ltd	13.92
Jiangsu Feichi Co., Ltd	Jiangsu Feichi Co., Ltd	13.92
Oriental Tyre Technology Limited	Midland Off The Road Tire Co., Ltd	13.92
Oriental Tyre Technology Limited	Midland Specialty Tire Co., Ltd	13.92
Oriental Tyre Technology Limited	Xuzhou Hanbang Tyres Co., Ltd	13.92
Qingdao Etyre International Trade Co., Ltd	Shandong Xingda Tyre Co. Ltd	13.92
Qingdao Etyre International Trade Co., Ltd	Shandong Xingyuan International Trade Co. Ltd	13.92
Qingdao Etyre International Trade Co., Ltd	Shandong Xingyuan Rubber Co. Ltd	13.92
Qingdao Hengda Tyres Co., Ltd	Qingdao Hengda Tyres Co., Ltd	13.92
Qingdao Milestone Tyre Co., Ltd	Qingdao Shuanghe Tyre Co., Ltd	13.92
Qingdao Milestone Tyre Co., Ltd	Shandong Zhentai Tyre Co., Ltd	13.92
Qingdao Milestone Tyre Co., Ltd	Shifeng Double-Star Tire Co., Ltd	13.92
Qingdao Milestone Tyre Co., Ltd	Weifang Longtai Tyre Co., Ltd	13.92
Qingdao Qizhou Rubber Co., Ltd	Qingdao Qizhou Rubber Co., Ltd	13.92
Qingdao Sinorient International Ltd	Qingdao Hengda Tyres Co., Ltd	13.92
Qingdao Sinorient International Ltd	Shifeng Double-Star Tire Co., Ltd	13.92
Qingdao Sinorient International Ltd	Tengzhou Broncho Tyre Co., Ltd	13.92
Shandong Huitong Tyre Co., Ltd	Shandong Huitong Tyre Co., Ltd	13.92
Shandong Jinyu Tyre Co., Ltd	Shandong Jinyu Tyre Co., Ltd	13.92
Shandong Taishan Tyre Co., Ltd	Shandong Taishan Tyre Co., Ltd	13.92
Shandong Wanda Boto Tyre Co., Ltd	Shandong Wanda Boto Tyre Co., Ltd	13.92
Shandong Xingyuan International Trading Co., Ltd	Shangdong Xingda Tyre Co., Ltd	13.92

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[2] *Id.*, 73 FR at 51625.

[3] *See GPX Int'l Tire Corp.* v. *United States*, Consol. Ct. No. 08–00285, Slip Op. 10–84 at *19–*20, *28 (Ct. Int'l Trade August 4, 2010) ("*GPX II*").

[4] *See Second Remand Redetermination, GPX Int'l Tire Corp.* v. *United States*, Consol. Ct. No. 08–00285, dated September 3, 2010, at 4–9.

[5] *Id.* at 9–12.

[6] *See GPX III.*

[7] *See 2010 Timken Notice*, 75 FR 62504.

[8] A summary of this litigation can be found in *Certain New Pneumatic Off-the Road Tires from the People's Republic of China: Corrected Notice of Decision of the Court of International Trade Not in Harmony and Corrected Notice of Amended Final Determination*, 80 FR 31889 (June 4, 2015) ("*2015 Timken Notice*").

[9] *See GPX Int'l Tire Corp.* v. *United States*, 780 F.3d 1136 (Fed. Cir. 2015).

[10] For Starbright/GPX, *see Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011). For TUTRIC, *see Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009–2010 Antidumping Duty Administrative Review and Final Rescission, in Part*, 77 FR 14495 (March 12, 2012).

[11] *See 2015 Timken Notice; see also GPX Int'l Tire Corp.* v. *United States*, Consol. Ct. No. 08–00285, Slip Op. 15–46 (CIT May 18, 2015).

Exporter	Producer	Weighted-average margin (percent)
Shandong Xingyuan International Trading Co., Ltd	Xingyuan Tyre Group Co., Ltd	13.92
Techking Tires Limited	Shandong Xingda Tyre Co. Ltd	13.92
Techking Tires Limited	Shandong Xingyuan International Trade Co. Ltd	13.92
Techking Tires Limited	Shandong Xingyuan Rubber Co. Ltd	13.92
Triangle Tyre Co., Ltd	Triangle Tyre Co., Ltd	13.92
Wendeng Sanfeng Tyre Co., Ltd	Wendeng Sanfeng Tyre Co., Ltd	13.92
Kenda Rubber (China) Co., Ltd./Kenda Global	Kenda Rubber (China) Co., Ltd	13.92
Qingdao Aonuo Tyre Co., Ltd	Qingdao Aonuo Tyre Co., Ltd	13.92

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) and 777(i)(1) of the Act.

Dated: June 28, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–17308 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 18, 2016, the Department of Commerce ("Department") issued its final determination under a section 129 proceeding regarding the fourth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") with respect to the Minh Phu Group. On July 18, 2016, the U.S. Trade Representative ("USTR") instructed the Department to implement the 129 Final Determination. As a result, the Department is now implementing its determination.

DATES: Effective July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Nature of the Proceeding

Section 129 of the Uruguay Rounds Agreement Act ("URAA")[1] allows the Department to amend, rescind, or modify a determination found by a WTO dispute settlement panel or the Appellate Body to be inconsistent with U.S. obligations under the Antidumping Agreement. Specifically, section 129(b)(2) provides that, "notwithstanding any provision of the Tariff Act of 1930 . . .," within 180 days after receipt of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.[2] The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) ("SAA"), refers variously to such a determination by the Department as a "new," "second," and "different" determination.[3] After consulting with the Department and the appropriate congressional committees, the USTR may direct the Department to implement, in whole or in part, the new determinations made under section 129 of the URAA.[4] Pursuant to section 129(c) of the URAA, the new determinations shall apply with respect to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement the new determinations.[5] This determination may be subject to judicial review separate and apart from judicial review of the Department's original determination.[6]

Background

At the written request of USTR, the Department informed interested parties on May 20, 2016, that it was initiating a proceeding under section 129 of the URAA to implement certain findings of the WTO dispute settlement panel in *United States—Anti-Dumping Measures on Certain Frozen Warmwater Shrimp from VietNam* (WTO/DS429) ("*Panel Report*").[7] On May 20, 2016, the Department issued its preliminary determination in this proceeding[8] in which the Department recalculated the weighted-average dumping margin for the Minh Phu Group[9] from the *AR4 Amended Final*[10] by eliminating the denial of offsets for non-dumped sales

On July 6, 2016, the Department solicited comments from interested parties regarding the Preliminary 129 Determination, and also released the draft revocation instructions with a proposed importer and exporter certification requirement.[11] On July 13, 2016, the Minh Phu Group filed comments regarding the trade names listed for revocation in the Prelim Comment Memo at Attachment I.[12] Consequently, the Department issued the 129 Final Determination on July 18, 2016.[13]

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[1] Citation to "section 129" refers to section 129 of the URAA, codified at 19 U.S.C. 3538.

[2] *See* 19 U.S.C. 3538(b)(2).

[3] *See* SAA at 1025, 1027.

[4] *See* 19 U.S.C. 3538(b)(4).

[5] *See* 19 U.S.C. 3538(c).

[6] *See* 19 U.S.C. 1516a(a)(2)(B)(vii).

[7] *See* Letter from USTR, re: "Request to Comply with WTO Panel Report," dated May 20, 2016. *See also* Letter from the Department to All Interested Parties, re: "Initiation of DS429," dated May 20, 2016.

[8] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Preliminary Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated May 20, 2016 ("129 Preliminary Determination"). *See also* Memorandum to the File, from Irene Gorelik, Senior Analyst, Office V, re: "Preliminary Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam ("Vietnam")" ("MPG 129 Prelim Memo"), dated May 20, 2016.

[9] For purposes of this proceeding, the "Minh Phu Group" includes the following companies: (1) Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), (2) Minh Phu Seafood Corp., (3) Minh Phu Seafood Corporation, (4) Minh Phu Seafood Pte, (5) Minh Qui Seafood, (6) Minh Qui Seafood Co., Ltd., (7) Minh Qui, (8) Minh Phat Seafood Co., Ltd., (9) Minh Phat, (10) Minh Phat Seafood, (11) Minh Phat Seafood Corp., (12) Minh Phu Hau Giang Seafood Joint Stock Company, (13) Minh Phu Hau Giang Seafood Co., Ltd., (14) Minh Phu Hau Giang Seafood Corp., and (15) Minh Phu Hau Giang Seafood Processing Co., Ltd. *See* 129 Final Determination.

[10] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) ("*AR4 Final*") and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 61122 (October 4, 2010) ("*AR4 Amended Final*").

On July 18, 2016, the USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the 129 Final Determination have been completed. As a result, in accordance with section 129(b)(4) of the URAA, USTR directed the Department to implement this determination.[14]

Implementation of the 129 Final Determination

Pursuant to the USTR Implementation Letter, the 129 Final Determination is hereby implemented and adopted by this notice. A list of the issues discussed in the 129 Final Determination are attached as an Appendix to this notice. The 129 Final Determination is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). Access to ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. A complete version of the memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/download/section129/full-129-index.html.* The signed 129 Final Determination and the respective electronic version of the memorandum are identical in content.

Final Weighted-Average Dumping Margin

As a result of the above, the *AR4 Amended Final* recalculated weighted-average dumping margin for the Minh Phu Group, unchanged from the Preliminary 129 Determination, is:

Producer and exporter	Section 129 results
Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), aka Minh Phu Seafood Corp., aka Minh Phu Seafood Corporation, aka Minh Phu Seafood Pte, aka Minh Qui Seafood, aka Minh Qui Seafood Co., Ltd., aka Minh Qui, aka Minh Phat Seafood Co., Ltd., aka Minh Phat, aka Minh Phat Seafood, aka Minh Phat Seafood Corp., aka Minh Phu Hau Giang Seafood Joint Stock Company, aka Minh Phu Hau Giang Seafood Co., Ltd., aka Minh Phu Hau Giang Seafood Corp., aka Minh Phu Hau Giang Seafood Processing Co., Ltd	0.00%

Partial Revocation of the Antidumping Duty Order

Because the Department has re-calculated a weighted-average dumping margin of zero percent for the Minh Phu Group, which results in three consecutive years of no dumping, and the Minh Phu Group has certified[15] that it will not sell certain frozen warmwater shrimp in the future at less than fair value, the Department is revoking the *AD Order* with respect to the Minh Phu Group, for entries made on or after July 18, 2016. The Department's practice with respect to revocation of companies from an antidumping duty order is to exclude companies in specific producer-exporter combinations.[16] Accordingly, the Department will instruct U.S. Customs and Border Protection ("CBP") to liquidate, without regard to antidumping duties, entries of certain frozen warmwater shrimp, produced and exported by the Minh Phu Group[17] which were entered, or withdrawn from warehouse, for consumption on or after July 18, 2016. Furthermore, the Department will instruct CBP to discontinue the suspension of liquidation and the collection of cash deposits for estimated antidumping duties for entries of certain frozen warmwater shrimp produced and exported by the Minh Phu Group. The Department will instruct CBP to continue to collect cash deposits for estimated antidumping duties from other Vietnamese exporters as the *AD Order,* in whole, has not been revoked. Furthermore, the Department will require the Minh Phu Group and its importers to participate in a certification requirement for those entries which are no longer subject to the *AD Order,* as discussed in the 129 Final Determination.[18]

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[11] *See* Memorandum to the File from Irene Gorelik, Senior Analyst, Office V, re: "Schedule for Comments on the Section 129 Preliminary Determination and Release of Draft Revocation Instructions with Importer Certification Requirement for Comment," dated July 6, 2016 ("Prelim Comment Memo").

[12] *See* Letter from the Minh Phu Group, re: "Minh Phu Group's Comments on Draft Revocation Instructions," dated July 13, 2016.

[13] *See* Memorandum from Christian Marsh to Paul Piquado, re: "Final Determination of the Proceeding under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated July 18, 2016 ("129 Final Determination").

[14] *See* Letter from USTR, re: "Request to Implement Final Determination," dated July 18, 2016 ("USTR Implementation Letter").

[15] *See* Memorandum to the File, from Irene Gorelik, Senior Analyst, re: "Placing AR4 Documents on the Record of DS429," dated May 20, 2016, at .pdf page 15.

[16] *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Fifth Antidumping Duty Administrative Review and Final Results of the Seventh New Shipper Review,* 68 FR 25861 (May 14, 2003) and accompanying Issues and Decision Memorandum at Comment 1. *See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997, 71004 (December 8, 2004), where the Department stated that "the Department does not require any cash deposit or posting of a bond for Zhanjiang Guolian when the subject merchandise is produced and exported by Zhanjiang Guolian." Subsequently, in the *PRC Shrimp Order,* the Department stated that "pursuant to 735(c)(1)(B) of the Act, we will instruct CBP to suspend liquidation of all entries of certain frozen warmwater shrimp and prawns from the PRC (except merchandise *produced and exported* by Zhanjiang Guolian because this company has a *de minimis* margin)" (emphasis added). *See* Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149, 5152 (February 1, 2005) ("*PRC Shrimp Order*").

[17] Revocation for the Minh Phu Group is specific to merchandise produced and exported by: (1) Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), (2) Minh Phu Seafood Corp., (3) Minh Phu Seafood Corporation, (4) Minh Phu Seafood Pte, (5) Minh Qui Seafood, (6) Minh Qui Seafood Co., Ltd., (7) Minh Qui, (8) Minh Phat Seafood Co., Ltd., (9) Minh Phat, (10) Minh Phat Seafood, (11) Minh Phat Seafood Corp., (12) Minh Phu Hau Giang Seafood Joint Stock Company, (13) Minh Phu Hau Giang Seafood Co., Ltd., (14) Minh Phu Hau Giang Seafood Corp., and (15) Minh Phu Hau Giang Seafood Processing Co., Ltd.

This final determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: July 18, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Issues in the 129 Final Determination

I. Summary
II. Background
III. Discussion of the Issues
  Comment 1: Company Names to be Revoked from the *AD Order*
IV. Section 129 Final Determination
V. Revocation of the Minh Phu Group
VI. Recommendation

[FR Doc. 2016–17383 Filed 7–21–16; 8:45 am]

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[18] *See* 129 Final Determination Memo at 6 and Appendix.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Reviews (2014–2015; 2015–2016) and Compromise of Outstanding Claims

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is rescinding, in part, the antidumping duty administrative reviews for the antidumping duty order ("the Order") on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") for the periods February 1, 2014, through January 31, 2015, and February 1, 2015, through January 31, 2016 with respect to sales made by the Minh Phu Group. Further, the Department is compromising its claims for certain antidumping duties for entries of subject merchandise exported by the Minh Phu Group for the period February 1, 2014, through July 17, 2016.

DATES: Effective July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Rescission of Reviews

Tenth Administrative Review (2014–2015)

On February 27, 2015, Vietnamese Association of Shrimp Exporters and Producers ("VASEP"), Ad Hoc Shrimp Trade Action Committee ("AHSTAC"), and American Shrimp Processors Association ("ASPA") each requested a review of the Order for the period February 1, 2014, through January 31, 2015, with respect to sales made by the Minh Phu Group.[1]

On April 3, 2015, the Department published in the **Federal Register** a notice of initiation of the tenth administrative review of the Order, covering the period February 1, 2014, through January 31, 2015.[2] On July 6, 2016, VASEP, AHSTAC, and ASPA withdrew their requests for review with respect to the Minh Phu Group and requested that the Department exercise its authority to extend the 90-day deadline to withdraw the requests for review and rescind the administrative review, in part, under extraordinary circumstances. In particular, the parties explained their understanding that extraordinary circumstances exist because the withdrawals of review requests for the Minh Phu Group will assist the government of the United States and government of Vietnam in reaching a mutually satisfactory resolution with respect to *United States—Anti-dumping Measures of Certain Shrimp from Viet Nam* (DS429) and *United States Anti-dumping Measures of Certain Shrimp from Viet Nam* (DS404). The parties further explained their understanding that a mutually satisfactory resolution of these disputes was not effectuated within the 90-day deadline, and, but for this mutually satisfactory resolution, the parties would not be withdrawing their request for review of the Minh Phu Group.

Section 351.213(d)(1) of the Department's regulations states that the Department will rescind an administrative review if a party requesting the review withdraws the request within 90 days of the publication of the notice of initiation. Further, 19 CFR 351.213(d)(1) allows the Department to extend the 90-day deadline if it considers it reasonable to do so. In the *AR10 Initiation Notice,* the Department stated that a party requesting an extension of the deadline must demonstrate that an "extraordinary circumstance" prevented it from submitting a timely withdrawal request, and that a determination to extend the deadline would be made on a case-by-case basis.[3] Although the parties' withdrawals of review request for the tenth administrative review are past the 90-day deadline, the Department determines that the parties have demonstrated that extraordinary circumstances exist for this segment of the proceeding, and thus, find it reasonable to extend the deadline pursuant to 19 CFR 351.213(d)(1). Therefore, because all parties that requested a review of the Minh Phu Group have withdrawn their requests, the Department is rescinding the review with respect to the Minh Phu Group for the period February 1, 2014, through January 31, 2015.

Eleventh Administrative Review (2015–2016)

On February 29, 2016, VASEP, AHSTAC, and ASPA each requested a review of the Order for the period February 1, 2015, through January 31, 2016, with respect to sales made by the Minh Phu Group.[4]

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[1] These requests for review included: Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co. Ltd., Minh Phat Seafood Co. Ltd., Minh Phu Hau Giang, collectively "Minh Phu Group"), as requested by VASEP; Minh Phat Seafood Co., Ltd., Minh Phu Hau Giang Seafood Corp., and Minh Phu Seafood Corp., as requested by AHSTAC; and Minh Phat Seafood, Minh Phat Seafood Co., Ltd., Minh Phu Seafood Corp., Minh Phu Seafood Pte, Minh Qui Seafood, and Minh Qui Seafood Co., Ltd., as requested by ASPA.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202 (April 3, 2015) ("*AR10 Initiation Notice*"). This initiation notice included, in relevant part: Minh Phat Seafood, Minh Phat Seafood Co., Ltd., Minh Phu Seafood Corp., Minh Phu Seafood Pte, Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co. Ltd., Minh Phat Seafood Co. Ltd., Minh Phu Hau Giang, collectively "Minh Phu Group"), Minh Phu Hau Giang Seafood Corp., Minh Qui Seafood, and Minh Qui Seafood Co., Ltd.

[3] *Id.,* 80 FR at 18202.

[4] These requests for review included, in relevant part: Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., Minh Phu Hau Giang Seafood Corp and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group"), as requested by VASEP; Minh Phat Seafood Co., Ltd., Minh Phu Hau Giang Seafood Corp., Minh Phu Seafood Corp., and Minh Qui Seafood Co., Ltd., as

On April 7, 2016, the Department published in the **Federal Register** a notice of initiation of the eleventh administrative review of the Order, covering the period February 1, 2015, through January 31, 2016.[5] On July 6, 2016, VASEP, AHSTAC, and ASPA timely withdrew their requests for review with respect to the Minh Phu Group and requested that the Department rescind the administrative review, in part.

Because all parties that requested a review of the Minh Phu Group have timely withdrawn their requests, the Department is rescinding the administrative review with respect to the Minh Phu Group for the period February 1, 2015, through January 31, 2016, pursuant to 19 CFR 351.213(d)(1).

Compromise of Outstanding Claims

On July 18, 2016, the United States and Vietnam entered into an Agreement on the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Vietnam ("Agreement") to reach a mutually satisfactory resolution of the WTO disputes, *United States—Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS429) and *United States—Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS404), and to provide for the settlement of certain litigation, and the compromise of certain claims arising under the Order. In conjunction with the Agreement, on July 18, 2016, the Department issued its determination pursuant to section 129 of the Uruguay Round Agreements Act ("URAA") which has culminated in the revocation of the Order, in part, with respect to the Minh Phu Group.[6] [7] In a July 18, 2016, letter, the United States Trade Representative ("USTR") notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the 129 Final Determination have been completed, and directed the Department, in accordance with section 129(b)(4) of the URAA, to implement this determination.[8]

Effective July 18, 2016, the Agreement compromises the United States' claims for certain outstanding duties on shipments of subject merchandise from the Minh Phu Group that entered, or were withdrawn from warehouse, for consumption during the period February 1, 2014, through July 17, 2016, pursuant to section 617 the Tariff Act of 1930, as amended ("the Act").[9] In accordance with the terms of the Agreement, the Department will instruct United States Customs and Border Protection ("CBP") to liquidate entries of certain frozen warmwater shrimp exported by the Minh Phu Group[10] and imported by Mseafood Corporation which entered, or were withdrawn from warehouse, for consumption during the period February 1, 2014, through July 17, 2016, without regard to antidumping duties, with the exception of such entries which entered the United States during the period February 1, 2016, through May 3, 2016, which will be liquidated at the cash deposit rate in effect at the time of entry. Further, the Department will instruct CBP to liquidate all other entries of certain frozen warmwater shrimp exported by the Minh Phu Group which entered, or were withdrawn from warehouse, for consumption during the period February 1, 2014, through July 17, 2016, at the cash deposit rate in effect at the time of entry.

Because there is no further basis for conducting an administrative review of the Order with respect to the Minh Phu Group for the period February 1, 2016, through January 31, 2017, the Department does not intend to initiate an administrative review with respect to the Minh Phu Group for this period.

This notice is issued and published in accordance with 19 CFR 351.213(d)(1) and (4).

Dated: July 18, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–17384 Filed 7–21–16; 8:45 am]

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requested by AHSTAC; and Minh Phat Seafood, Minh Phat Seafood Co., Ltd., Minh Phu Seafood Corp., Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co. Ltd., Minh Phu Hau Giang, collectively "Minh Phu Group"), Minh Phu Hau Giang Seafood Corp., Minh Phu Seafood Pte, Minh Qui Seafood, and Minh Qui Seafood Co., Ltd., as requested by ASPA.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016) ("*AR11 Initiation Notice*"). This initiation notice included, in relevant part: Minh Phat Seafood, Minh Phat Seafood Co., Ltd., Minh Phu Seafood Corp., Minh Phu Seafood Pte, Minh Phu Seafood Corporation, Minh Phu Hau Giang Seafood Corp., Minh Qui Seafood, Minh Qui Seafood Co., Ltd., Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., Minh Phu Hau Giang Seafood Corp and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group").

[6] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Final Determination of the Proceeding under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated July 18, 2016 ("129 Final Determination").

[7] In the 129 Final Determination, the Department indicated its intent to revoke the following Minh Phu Group individual company names from the Order: Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corp., Minh Phu Seafood Corporation, Minh Phu Seafood Pte, Minh Qui Seafood, Minh Qui Seafood Co., Ltd., Minh Qui, Minh Phat Seafood Co., Ltd., Minh Phat, Minh Phu Hau Giang Seafood Joint Stock Company, Minh Phu Hau Giang Seafood Co., Ltd., Minh Phat Seafood, Minh Phat Seafood Corp., Minh Phu Hau Giang Seafood Corp., and Minh Phu Hau Giang Seafood Processing Co., Ltd.

[8] *See* Letter from USTR, re: "Request to Implement Final Determination," dated July 18, 2016.

[9] *See also* Appendix 6 to the Agreement, entitled "Agreement between DOC, Minh Phu Group, MSeafood Corporation, AHSTAC, and ASPA."

[10] The following names will be listed in the CBP instructions: (1) Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), aka (2) Minh Phu Seafood Corp., aka (3) Minh Phu Seafood Corporation, aka (4) Minh Phu Seafood Pte, or (5) Minh Qui Seafood, aka (6) Minh Qui Seafood Co., Ltd., aka (7) Minh Qui, or (8) Minh Phat Seafood Co., Ltd., aka (9) Minh Phat, aka (10) Minh Phat Seafood, aka (11) Minh Phat Seafood Corp., or (12) Minh Phu Hau Giang Seafood Joint Stock Company, aka (13) Minh Phu Hau Giang Seafood Co., Ltd., aka (14) Minh Phu Hau Giang Seafood Corp., aka (15) Minh Phu Hau Giang Seafood Processing Co., Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE752

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 10, 2016 beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Boston Logan, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will develop OFL (overfishing level) and ABC (acceptable biological catch) recommendations for Georges Bank yellowtail flounder for fishing year 2017. They will also develop OFL and ABC recommendations for monkfish for fishing years 2017–19 as well as develop OFL and ABC recommendations for Atlantic deep-sea red crab for fishing years 2017–19. They will discuss other business as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17381 Filed 7–21–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE751

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings on Amendments to the U.S. Caribbean Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans: Timing of Accountability Measure-Based Closures in the U.S. Caribbean Draft Document.

SUMMARY: The Caribbean Fishery Management Council will hold public hearings on the Amendments to the U.S. Caribbean Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans: Timing of Accountability Measure-Based Seasonal Closures Including Draft Environmental Assessment: Amendment 8 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands, Amendment 7 to the Fishery Management Plan for the Spiny Lobster of Puerto Rico and the U.S. Virgin Islands, Amendment 6 to the Fishery Management Plan for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands. The complete document is available upon request and can be found at the Caribbean Council's Web site: *www.caribbeanfmc.com.*

DATES AND ADDRESSES: The dates and locations for the public hearings are:

August 15, 2016, Doubletree Hotel, De Diego Avenue, Condado, San Juan, Puerto Rico, from 7 p.m. to 9 p.m.

August 17, 2016, Mayagüez Holiday Inn Hotel, Mayagüez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico, from 7 p.m. to 9 p.m.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The proposed actions are to modify the timing for the application of accountability measures in the Reef Fish, Spiny Lobster, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands. The Amendment contains the following Actions and Alternatives:

ACTION 1: Modify the timing for the implementation of AM-based closures in the U.S. Caribbean EEZ.

Alternative 1: No Action. Continue AM-based closures resulting from an annual catch limit (ACL) overage, ending on December 31st of the closure year, and extending backward into the closure year for the number of days necessary to achieve the required reduction in landings.

Alternative 2 (Preferred): Accountability measure-based closures resulting from an ACL overage would end on September 30th of the closure year and extend backward toward the beginning of the year for the number of days necessary to achieve the required reduction in landings. The September 30th closure date would apply to all fishery management units (FMUs) for each of the Puerto Rico commercial and recreational sectors, St. Thomas/St. John, St. Croix, and Caribbean-wide. If Alternative 5 of this Action is also chosen for an FMU that includes species with seasonal closures in federal waters, closure dates for that FMU would be governed by Alternative 5. If, for any of the FMUs covered by Alternative 2, the number of available days running from September 30th backward to the beginning of the year is not enough to achieve the required reduction in landings, then the additional days needed would be captured by extending the closure forward toward the end of the year, beginning on October 1st and continuing for the number of days needed to achieve the required reduction.

Alternative 3: Accountability measure-based closures resulting from an ACL overage would begin on January 1st of the closure year and extend forward into the year for the number of days necessary to achieve the required reduction in landings. The January 1st closure start date would apply to all FMUs for each of Puerto Rico commercial and recreational sectors, St. Thomas/St. John, St. Croix, and Caribbean-wide. If Alternative 5 of this Action is also chosen for an FMU that includes species with seasonal closures in federal waters, closure dates for that FMU would be governed by Alternative 5.

Alternative 4: Establish a fixed fishing closure end date for the implementation of AMs for each FMU by island management area and, in the case of Puerto Rico, fishing sector (A. Puerto Rico (I. Commercial sector [The Puerto Rico spiny lobster FMU is addressed under the Commercial Sector sub-alternatives. This is because the spiny lobster ACL is governed by commercial landings. If the AM is triggered due to a Puerto Rico spiny lobster ACL overage, the commercial and recreational fishing season is reduced.] II. Recreational sector), B. St. Thomas/St. John, C. St. Croix, and D. Caribbean-wide), based on the highest or lowest average monthly landings of the most recent three years of available data (2012, 2013, 2014). A different closure date may be chosen for each FMU for each island management area and Puerto Rico fishing sector. The closure date will end on the last day of the identified month and extend backward toward the beginning of the year for the number of days necessary to achieve the required reduction in landings. If, for any FMU in any year, the number of available days running from the closure implementation date backward toward the beginning of the year is not enough to achieve the required reduction in landings, then the additional days needed would be captured by extending the closure forward toward the end of the year and continuing for the number of days needed to achieve the required reduction.

A. Puerto Rico

I. Commercial

Sub-Alternative 4a. Closure to end the last day of the month that has the highest landings based on monthly average landings through time, using 2012–2014 as the most recent three years of available landings data.

Sub-Alternative 4b. Closure to end the last day of the month with lowest landings based on monthly average landings through time, using 2012–2014 as the most recent three years of available landings data.

II. Recreational

Sub-Alternative 4c. Closure to end the last day of the second month that has the highest landings based on bi-monthly average landings through time, using 2012–14 as the most recent three years of available landings data.

Sub-Alternative 4d. Closure to end the last day of the second month with lowest landings based on bi-monthly average landings through time, using 2012–14 as the most recent three years of available landings data.

B. St. Thomas/St. John, USVI (All Sectors)

Sub-Alternative 4e. Closure to end the last day of the month that has the highest landings based on monthly average landings through time, using 2012–14 as the most recent three years of available landings data.

Sub-Alternative 4f. Closure to end the last day of the month with the lowest landings based on monthly average landings through time, using 2012–14 as the most recent three years of available landings data.

C. St. Croix, USVI (All Sectors)

Sub-Alternative 4g. Closure to end the last day of the month that has the highest landings based on monthly average landings through time, using 2012–2014 as the most recent three years of available landings data.

Sub-Alternative 4h. Closure to end the last day of the month with the lowest landings based on monthly average landings through time, using 2012–2014 as the most recent three years of available landings data.

D. Caribbean-Wide (All Sectors)

Sub-Alternative 4i. Closure to end the last day of the month that has the highest landings based on monthly average landings through time, using 2012–14 as the most recent three years of available landings data.

Sub-Alternative 4j. Closure to end the last day of the month with the lowest landings based on monthly average landings through time using 2012–14 as the most recent three years of available landings data.

Alternative 5: For FMUs that include species with seasonal closures in U.S. Caribbean federal waters (Table 2.2.6 in the document), AM-based closures resulting from an ACL overage for these FMUs would be timed to be continuous with the seasonal closure. The AM-based closure would extend either forward or backward from the seasonal closure into the year as specified in Sub-Alternatives 5a through 5n for the number of days necessary to achieve the required reduction in landings. If, for any of these FMUs, in any year, the number of available days running from the date specified by the sub-alternative, is not enough to achieve the required reduction in landings, then the additional days needed would be captured by extending the closure in the opposite direction and continuing for the number of days needed to fulfill the required reduction.

I. Groupers

A. Puerto Rico

1. Commercial

Sub-Alternative 5a: For the commercial sector of the Puerto Rico management area, an AM-based closure for the grouper complex would start on May 1st of the closure year and move forward toward the end of the year.

Sub-Alternative 5b: For the commercial sector of the Puerto Rico management area, an AM-based closure for the grouper complex would end on November 30th of the closure year and move backward toward the beginning of the year.

2. Recreational

Sub-Alternative 5c: For the recreational sector of the Puerto Rico management area, an AM-based closure for the grouper complex would start on May 1st of the closure year and move forward toward the end of the year.

Sub-Alternative 5d: For the recreational sector of the Puerto Rico management area, an AM-based closure for the grouper complex would end on November 30th of the closure year and move backward toward the beginning of the year.

B. St. Thomas/St. John, USVI (All Sectors)

Sub-Alternative 5e: For the St. Thomas/St. John management area, an AM-based closure for the grouper complex would start on May 1st of the closure year and move forward toward the end of the year.

C. St. Croix, USVI (All Sectors)

Sub-Alternative 5f: For the St. Croix management area, an AM-based closure for the grouper complex would start on May 1st of the closure year and move forward toward the end of the year.

II. Snappers

A. Puerto Rico

1. Commercial

Sub-Alternative 5g: For the commercial sector of the Puerto Rico management area, an AM-based closure for all snapper species in Snapper Unit 3 (SU3) would start on July 1st of the closure year and move forward toward the end of the year.

Sub-Alternative 5h: For the commercial sector of the Puerto Rico management area, an AM-based closure for all snapper species in Snapper Unit 1 (SU1) would end on September 30th of the closure year and move backward toward the beginning of the year.

2. Recreational

Sub-Alternative 5i: For the recreational sector of the Puerto Rico management area, an AM-based closure for all snapper species in SU3 would start on July 1st of the closure year and move forward toward the end of the year.

Sub-Alternative 5j: For the recreational sector of the Puerto Rico management area, an AM-based closure for all snapper species in SU1 would end on September 30th of the closure year and move backward toward the beginning of the year.

B. St. Thomas/St. John, USVI (All Sectors)

Sub-Alternative 5k: For the St. Thomas/St. John management area, an AM-based closure the snapper complex would start on July 1st of the closure year and move forward toward the end of the year.

Sub-Alternative 5l: For the St. Thomas/St. John management area, an AM-based closure for the snapper complex would end on September 30th of the closure year and move backward toward the beginning of the year.

C. St. Croix, USVI (All Sectors)

Sub-Alternative 5m: For the St. Croix management area, an AM-based closure for the snapper complex would start on July 1st of the closure year and move forward into the year.

Sub-Alternative 5n: For the St. Croix management area, an AM-based closure for the snapper complex would end on September 30th of the closure year and move backward toward the beginning of the year.

Action 2: Specify a time period for revisiting the approach to establish AM-based closures selected in Action 1.

Alternative 1. No action. Do not specify how often the approach chosen should be revisited.

Alternative 2 (Preferred). Revisit the approach selected no longer than 2 years from implementation and every 2 years thereafter.

Alternative 3. Revisit the approach selected no longer than 5 years from implementation and every 5 years thereafter.

Additional Information: Written comments can be sent to Dr. Graciela García-Moliner by email at *graciela_cfmc@yahoo.com* or by regular mail to Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, no later than August 22, 2016.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17380 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE736

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) will hold a meeting, which is open to the public.

DATES: The HMSMT will meet Monday, August 8 through Thursday, August 11, 2016. The meeting will begin at 1:30 p.m. on August 8 and at 8:30 a.m. on August 9–11. On each day the meeting will end at 5 p.m. or when business for the day is concluded.

ADDRESSES:

Meeting address: The meeting will be held in the Large Conference Room at the Pacific Fishery Management Council's office.

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The Council assigned several tasks to the HMSMT for completion by the September 2016 Council meeting. At this meeting, the HMSMT plans to draft reports for these tasks that can be included in the advanced briefing materials for the September Council meeting. These tasks include: (1) An update on international HMS management, including outcomes of the 80th Inter-American Tropical Tuna Commission meeting; (2) If available, reviewing exempted fishing permit (EFP) applications; (3) Developing recommendations for updates to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) to correct errors, revise out of date descriptions, and clarify descriptive passages; (4) Drafting a framework for reporting estimates of reference points for HMS FMP management unit species; (5) Developing recommendations responding to the referral to the Council by National Marine Fisheries Service of requests for rulemaking contained in the agency's response to the Center for Biological Diversity's petition for rulemaking to address the relative impacts of the U.S. fleet on the Pacific bluefin tuna stock (81 FR 39213); (6) Identifying data gaps and research needs for deep-set buoy gear (DSBG) to inform future Council recommendations on issuance of EFPs to test this gear for the objectives of developing a Federal fishing permit system for DSBG and regulatory authorizing use of the gear; (7) Identifying incentives for EFPs to test DSBG; (8) Developing a range of alternatives for a Federal permit for the California large mesh driftnet fishery for swordfish and sharks; and (9) Making recommendations on indicators to be included in the Annual State of the California Current Ecosystem Report delivered to the Council each March. The HMSMT may also discuss other matters related to HMS management besides the assignments enumerated above.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17378 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: StormReady, TsunamiReady, StormReady/TsunamiReady, and StormReady and TsunamiReady Supporter Application Forms.

OMB Control Number: 0648–0419.

Form Number(s): None.

Type of Request: Regular (revision of a currently approved information collection).

Number of Respondents: 305.

Average Hours per Response: Two hours for StormReady, TsunamiReady and Stormready/TsunamiReady applications, and one hour for support applications.

Burden Hours: 545.

Needs and Uses: This request is for revision of a currently approved information collection.

NOAA's National Weather Service would like to add a TsunamiReady Supporter Application Form to its currently approved collection, which includes StormReady, TsunamiReady, StormReady/TsunamiReady, and StormReady Supporter application forms. The title would then change to "StormReady, TsunamiReady, StormReady/TsunamiReady, StormReady Supporter and TsunamiReady Supporter Application Forms". This new application would be used by entities such as businesses and not-for-profit institutions that may not have the resources necessary to fulfill all the eligibility requirements to achieve the full TsunamiReady recognition. The form will be used to apply for initial TsunamiReady Supporter recognition and renewal of that recognition every five years. The federal government will use the information collected to determine whether an entity has met all of the criteria to receive TsunamiReady Supporter recognition.

Affected Public: Business or other for-profit organizations; state, local or tribal government.

Frequency: Every six years or one time only.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: July 18, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–17305 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 131105931–6595–02]

RIN 0648–XC970

Endangered and Threatened Wildlife and Plants: Notice of 12-Month Finding on a Petition To List the Caribbean Electric Ray as Threatened or Endangered Under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 12-month finding and availability of status review document.

SUMMARY: We, NMFS, announce a 12-month finding and listing determination on a petition to list the Caribbean electric ray (*Narcine bancroftii*) as threatened or endangered under the Endangered Species Act (ESA). We have completed a comprehensive status review of the species in response to a petition submitted by WildEarth Guardians and Defenders of Wildlife and considered the best scientific and commercial data available. Based on the best scientific and commercial data available, including the status review report (Carlson *et al.* 2015), we have determined that the species is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future. Therefore, we conclude that the Caribbean electric ray does not warrant listing at this time.

DATES: This finding was made on July 22, 2016.

ADDRESSES: The Caribbean electric ray status review document associated with this determination and its references are available by submitting a request to the Species Conservation Branch Chief, Protected Resources Division, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701–5505, Attn: Caribbean Electric Ray 12-month Finding. The report and references are also available electronically at: *http://sero.nmfs.noaa.gov/protected_resources/listing_petitions/index.html.*

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS, Southeast Regional Office (727) 551–5778; or Marta Nammack, NMFS, Office of Protected Resources (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2010, we received a petition from WildEarth Guardians to list the Caribbean electric ray as threatened or endangered throughout its historical and current range and to designate critical habitat within the territory of the United States concurrently with listing the species under the ESA. On March 22, 2011 (76 FR 15947), we made a 90-day finding that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On March 22, 2012, we received a 60-day notice of intent to sue from WildEarth Guardians on the negative 90-day finding. On February 26, 2013, WildEarth Guardians filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Middle District of Florida, Tampa Division, on the negative 90-day finding. On October 1, 2013, the Court approved a settlement agreement under which we agreed to accept a supplement to the 2010 petition, if any was provided, and to make a new 90-day finding based on the 2010 petition, the supplement, and any additional information readily available in our files.

On October 31, 2013, we received a supplemental petition from WildEarth Guardians and Defenders of Wildlife. On January 30, 2014, we published a 90-day finding with our determination that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted (79 FR 4877). In our 90-day finding, we requested scientific and commercial information from the public to inform the status review on the species. Specifically, we requested information on the status of the Caribbean electric ray throughout its range including: (1) Historical and current distribution and abundance of this species throughout its range; (2) historical and current population trends; (3) life history and habitat requirements; (4) population structure information, such as genetics data; (5) past, current and future threats specific to the Caribbean electric ray, including any current or planned activities that may adversely impact the species, especially information on destruction, modification, or curtailment of habitat and on bycatch in commercial and artisanal fisheries worldwide; (6) ongoing or planned efforts to protect and restore the species and its habitat; and (7) management, regulatory, and enforcement information on the species and its habitats. We received information from the public in response to the 90-day finding and incorporated relevant information in the species status review.

Listing Determinations Under the ESA

We are responsible for determining whether the Caribbean electric ray is threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation to protect the species.

To be considered for listing under the ESA, a group of organisms must constitute a "species," which is defined in section 3 of the ESA to include taxonomic species and "any subspecies of fish, or wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." In our 90-day finding we found that the petitioned species constitutes a valid species eligible for listing under the ESA based on the information presented in the petition, along with information readily available in our files. To determine whether the Caribbean electric ray warrants listing under the ESA, we convened a Status Review Team (SRT). The SRT was comprised of NMFS Southeast Fisheries Science Center and NMFS Southeast Regional Office biologists. The SRT reviewed an unpublished dissertation that separated the genus *Narcine* of the western Atlantic Ocean into two species: *N. brasiliensis,* and *N. bancroftii* (de Carvalho 1999). The SRT noted some taxonomic uncertainty (see *Taxonomy and Species Description*), but accepted de Carvalho (1999) as the best available information on the species taxonomy. *Narcine bancroftii* is recognized as a valid species in the Catalog of Fishes, the authoritative reference for taxonomic fish names and taxonomic revision (Eschmeyer 2015). We accept both de Carvalho (1999) and Eschmeyer (2015) as the best available science at this time, thus we maintain that *Narcine bancroftii* is a valid species eligible for listing.

When we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term "foreseeable future." It is appropriate to interpret "foreseeable future" as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the ability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years or a single timeframe.

Under section 4(a) of the ESA, we must determine whether any species is endangered or threatened due to any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (sections 4(a)(1)(A) through (E)).

The SRT completed a status review report, which summarized the best available information on the taxonomy, distribution, abundance, life history and biology of the species, analyzed the threats identified as potentially impacting the status of the species, and conducted an extinction risk analysis (ERA) to determine the status of the species. The results of the ERA are discussed below under "Extinction Risk Analysis." The status review report incorporates relevant information received from the public in response to our request for information (79 FR 4877; January 30, 2014). The draft status review report was submitted to 3 independent peer reviewers and comments and information received from the peer reviewers were addressed and incorporated as appropriate into the draft report before finalizing it. The peer review report is available at *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.*

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species" is not currently in danger of extinction but is likely to become so within the foreseeable future. The key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

In determining whether the species meets the standard of endangered or threatened, we considered the specific life history and ecology of the species, the nature of threats, the species' response to those threats, and population numbers and trends. We considered information summarized in the status review report (Carlson *et al.* 2015). We considered each threat that was identified, both individually and cumulatively. For purposes of our analysis, the mere identification of factors that could impact a species negatively is not sufficient to compel a finding that ESA listing is appropriate. In considering those factors that might constitute threats, we look beyond mere exposure of the species to the factor to determine whether the species responds, either to a single or multiple threats, in a way that causes actual impacts to the species' status. In making this finding, we have considered and evaluated the best available scientific and commercial information, including information received in response to our 90-day finding.

The following sections provide key information presented in the status review report (Carlson *et al.* 2015).

Summary of the Status Review

Life History, Biology and Ecology

Taxonomy and Morphology

Narcine bancroftii is a species in the phylum *Chondrata,* class *Chondrichthyes,* order *Torpediniforms* and family *Narcinidae.* Common names for this species include the lesser electric ray, Bancroft's numbfish, and Caribbean electric ray. The SRT titled the status review report and referred to the species in its report as the 'lesser electric ray' because the species is almost unanimously referred to as the lesser electric ray, including in the published literature. In our finding, we retain the use of 'Caribbean electric ray' for the sole purpose of being consistent with the petitioned action.

Rays within the genus *Narcine,* collectively known as numbfishes, occur globally in temperate to tropical marine waters and according to Eshmeyer (2015) are composed of 23 species. Until recently, rays of the genus *Narcine* within the western North Atlantic Ocean were considered to be one widely distributed species, *N. brasiliensis* (von Olfers 1831). However, Garman (1913) was the first to notice that there was sufficient regional variability among individuals and suggested that *N. brasiliensis* could be separated into two distinct species. Later, in a taxonomic revision of the genus *Narcine,* de Carvalho (1999) separated numbfishes of the western Atlantic Ocean into two species: *N. brasiliensis,* known as the Brazilian electric ray, and *N. bancroftii* (Griffith and Smith 1834), known as Bancroft's numbfish, or more commonly, the lesser electric ray. *N. brasiliensis* is thought to range from southeastern Brazil to northern Argentina, whereas *N. bancroftii* is reported to range from North Carolina to northeastern Brazil, including the Gulf of Mexico (GOM) and the Caribbean Sea (de Carvalho 1999).

The SRT noted that "the taxonomy of *Narcine* in the western Atlantic Ocean remains uncertain because taxonomic changes are sometimes accepted in ichthyology without adequate or supporting proof and the de Carvalho (1999) study remains unpublished." The SRT pointed out the need for a genetics-based examination (*e.g.*, mitochondrial DNA analysis) of *Narcine* specimens from throughout their known range in the western Atlantic Ocean to support the presence of two distinct species. However, as we previously discussed (see Listing Determinations Under the ESA), we accept both de Carvalho (1999) and Eschmeyer (2015) as the best available science at this time, thus we maintain that *Narcine bancroftii* is a valid species eligible for listing.

Species Description

The Caribbean electric ray is a small, shallow-water batoid characterized by a flattened, oval-shaped disc, large pelvic fins, and oversized dorsal and caudal fins that cover most of its tapering tail (Tricas *et al.* 1997). The dorsal surface of the Caribbean electric ray varies from a light yellow brown to a darker greyish brown with dark blotches over the snout and small incomplete eyespots over the disc and base of the tail. The underside of the species is white or cream colored sometimes with grey or brown blotches (McEachran and Carvalho 2002). The Caribbean electric ray has two electric organs that can produce 14–37 volts of electricity (Smith 1997; Tricas *et al.* 1997). Outlines of these kidney-shaped electric organs may be visible behind the eyes as well as spiracles with rounded tubercles along the edges next to the eyes (Smith 1997). Each organ consists of a honeycomb of 280 to 430 columns, containing several hundred electric plates, and the organs combined account for about a sixth of total body weight (Tricas *et al.* 1997).

Range and Distribution

The Caribbean electric ray is widely distributed in warm temperate to tropical waters of the western Atlantic from North Carolina, through the GOM, the Caribbean, the Lesser and Greater Antilles, and the north coast of South America (McEachran and de Carvalho 2002). Bigelow and Schroeder (1953) wrote: "This Electric Ray has been reported from localities so widely distributed, and it is so well represented in the larger museums of both America and Europe, that it is expected anywhere in the American littoral [zone], provided that the type of bottom and depth be suitable . . ." The southern extent of the range of Caribbean electric rays is uncertain. De Carvalho (1999) reported specimens taken from the southern hemisphere off the State of Bahia, Brazil, however, McEachran and de Carvalho (2002) later placed the southern extent of the range within the northern hemisphere off Venezuela.

The Caribbean electric ray exhibits a patchy distribution throughout its range and is locally abundant in areas that contain specific habitat characteristics. Fishery independent trawl surveys in the Gulf of Mexico show that the species is patchily distributed (see *Abundance and Trends*). The species' local abundance is best documented by Rudloe (1989a) who found Caribbean electric rays abundant in barrier beach surf zones and adjacent passes between barrier islands at depths of 8–16 m around Cape San Blas, Florida, in the northern Gulf of Mexico. Rudloe (1989a) collected 3,913 rays from March 1985 to March 1987 from sites in those areas at rates ranging from 3–31 rays per hour. Rudlow (1989a) points out that "the rays were concentrated over an extremely limited area on each bar" and that "As little as several tens of meters change in position could determine whether there were two or 20 rays in the catch."

Further, data indicate seasonal variation in their local distributions. Rudloe (1989a) suggested that "rays are localized in their habitats during the warm months at least, and move directly from one preferred locality to another or remain in one area over a period of weeks to months." The species is evidently migratory but its movements are poorly known. Existing information suggests at least some Caribbean electric ray seasonal migrations are likely associated with water temperature. Bigelow and Schroeder (1953) stated: "Captures of *Narcine brasiliensis* [*bancroftii*] off the Texas coast in the months of September, November, and March show that it winters that far north and probably does likewise at least along the southern part of Florida. However, northward along the Atlantic Coast of the United States, to North Carolina, all of the records of it, except one, have been in summer." Similarly, Coles (1915) reported Caribbean electric rays are present only off the northernmost part of their range (North Carolina) during the summer. Rudloe (1989a) stated that within the GOM, rays were caught in the surf zone at Alligator Point, Florida, from March to December, and no rays were taken anywhere in the area from December to February. Funicelli (1975) reported that Caribbean electric rays are found at the deeper ends of their depth range during winter in the northern GOM, particularly during colder months from November–February.

Habitat Use

The Caribbean electric ray inhabits relatively shallow waters, often within the surf zone (Coles 1910; Fowler 1910; Bigelow and Schroeder 1953; Hoese and Moore 1998; Rudloe 1989a). The Caribbean electric ray generally occupies depths ranging from the intertidal zone to approximately 37 m (Bigelow and Schroeder 1953, Rudloe 1989a); however, there is at least one report of a Caribbean electric ray being captured at a depth of 340 m (Schwartz 2010). Fisheries independent data collected by NMFS verify that the Caribbean electric ray is primarily a shallow water species. From 2002–2013, 5,137 trawls were conducted in the northern GOM at randomly selected stations ranging in depth from 4.7–326 m. A total of 127 Caribbean electric rays were collected, and the mean depth of capture was 9.29 m (range 5.20–17.50 m; S.D. 2.93). Environmental data were collected during these surveys demonstrating that this species inhabits waters ranging in temperature from 21.9–30.2 °C (mean = 27.18 °C; S.D. = 1.57), salinity from 27.7–36.9 ppt (mean = 34.10 ppt; S.D. 2.32), dissolved oxygen from 2.0–3.7 mg/l (mean = 2.85 mg/l; S.D. = 0.99) and turbidity from 0.6–94.0 percent transmissivity (mean = 37.77 percent transmissivity; S.D. = 28.23). These data are consistent with past reports of environmental conditions associated with the presence of Caribbean electric rays (*e.g.*, Gunter 1945, Rudloe 1989a, Steiner *et al.* 2007).

The best available information on the species indicates that it occurs predominately in sand bottom habitats. While Caribbean electric rays have a relatively broad distribution in the western Atlantic Ocean, the species is reported to occur almost exclusively on sand bottom habitats (Coles 1910, Bigelow and Schroeder 1953, Rudloe 1989a). For example, Rudloe (1989a) determined that "barrier beach surf zones and on [sand]bars adjacent to passes between barrier islands" are the preferred habitat for Caribbean electric rays. Both of these habitats are dominated by sand. Anecdotal reports also document Caribbean electric rays exclusively in high energy beach and sandbar habitats. In NMFS fisheries-independent trawl survey data, all Caribbean electric ray specimens recorded in the GOM were collected over sand bottom habitats. The SRT found only one study of Caribbean electric rays occurring in mud and fine silt habitats (*i.e.*, Dean *et al.* 2005).

Caribbean electric rays are generally nocturnal and spend daylight hours buried under the sand. Rudloe (1989a) noted that sampling was limited to night-time when the rays were active. Numerous reports of Caribbean electric ray sightings document that these rays are most commonly found buried in the sand with only their spiracles visible.

Age and Growth

There are no age and growth studies for this species. McEachran and de Carvalho (2002) report size at birth at 9–10 cm with maximum growth to 58 cm TL. Observations of Rudloe (1989a) suggest rapid growth during the first year. Rudloe (1989a) estimated that newborn rays less than 14 cm total length (TL) in late summer attain a size of 15–19 cm TL by fall. Rudloe (1989a) reported growth was dormant January and February and then resumed in March, with young attaining a size of 20–29.9 cm TL by the end of their first year.

Reproductive Biology

Estimates of size at reproductive maturity for male Caribbean electric rays range from 20 to 26 cm TL (Bigelow and Schroeder 1953, Funicelli 1975, de Carvalho 1999, Moreno *et al.* 2010). Females are reported to reach a larger size than males at reproductive maturity. The smallest reported female with well-developed gonads measured 26 cm TL (Funicelli 1975), and the smallest gravid female measured 27.1 cm TL (Bigelow and Schroeder 1953).

Rudloe (1989a) observed that all the females larger than 29 cm TL, both in captivity and collected from the field off Florida, were gravid in July. This indicates that the reproductive cycle is annual, and adult females in the population are capable of reproducing each year. Moreno *et al.* (2010) verified annual reproduction by mature females. Rudloe (1989a) documents that females give birth off Florida in August and September in the surf zone. Rudloe (1989a) also observed a peak in newborn rays at more offshore Florida locations in November (*i.e.,* at West Pass) and December (*i.e.,* at Cape San Blas), but could not determine if these rays were born offshore or had immigrated from the beach. Rudloe (1989a) did not estimate gestation period of Caribbean electric rays. In the Colombian Caribbean Sea, Moreno *et al.* (2010) found that the gestation period lasts approximately 4 months, with birth occurring from February to April.

The brood size of female Caribbean electric rays has been reported as 14 by Bean and Weed (1911), 4–15 by Bigelow and Schroeder (1953), 5–13 by de Carvalho (1999), and 1–14 by Moreno *et al.* (2010).

Diet and Feeding

Caribbean electric rays are reported to feed on small, benthic organisms (Moreno *et al.* 2010). Funicelli (1975) observed annelids in 84 percent of the Caribbean electric ray stomachs he examined from the northern GOM, which was in agreement with the limited data presented by Gudger (1912) and Bigelow and Schroeder (1953). Fishes within the order Anguilliformes were the next most abundant prey (30 percent of individuals), followed by arthropods and molluscs. Arthropods were the dominant prey type found in small individuals less than 300 mm TL (Funicelli 1975). Moreno *et al.* (2009) and Grijalba-Bendeck *et al.* (2012) reported similar findings for Caribbean electric rays collected in the Caribbean Sea off Colombia with annelids occurring in the majority of stomachs examined. Both studies reported that arthropods constituted a larger portion of the diet than anguilliform fishes. A diet composed primarily of annelids has also been reported for the closely related Brazilian electric ray (Goitein *et al.* 1998).

Dean and Motta (2004a and b) characterize Caribbean electric ray feeding behavior and kinematics. The Caribbean electric ray is a benthic suction feeder with highly protrusible jaws. The Caribbean electric ray has the ability to protrude its jaws by nearly 100 percent of its head length to excavate buried polychaetes.

Predation and Disease

Almost nothing is known of natural predation on the Caribbean electric ray. Presumably its electric organs deter potential predators, such as sharks and dolphins. Rudloe (1989a) reported that tagged rays released off trawlers were repeatedly observed to be actively avoided by both sharks and dolphins that fed heavily on other rays and bony fishes as they were culled overboard. A researcher reported observed consumption of Caribbean electric rays by large red drum that were captured on bottom longlines and dissected. It was not clear to the researcher whether the rays were discarded bycatch that were opportunistically consumed or not (M. Ajemian, Texas A&M-Corpus Christi, pers. comm. to Jennifer Lee, NMFS, June 19, 2015). Similarly, there is scant information on disease within the species. Tao (2013) reported that bacteria, such as *Vibrio* species, are prevalent in the blood of healthy Caribbean electric rays. This condition is not uncommon among chondrichthyan fishes.

Status, Abundance and Trends

The International Union for the Conservation of Nature (IUCN) Red List Assessment classifies the Caribbean electric ray as Critically Endangered (de Carvalho *et al.* 2007). The IUCN Red List assessment notes that the species has declined 98 percent since 1972 in the northern GOM according to a study by Shepherd and Myers (2005) of trawl data from the Southeast Area Monitoring and Assessment Program (SEAMAP). The IUCN Red List assessment reports that "similar high rates of decline are seen in the U.S. coastal areas between Cape Canaveral (Florida) and Cape Hatter[a]s (North Carolina) in U.S. trawl surveys between 1989 and 2001 (a decline to 5% during this period)". The IUCN also states that diver survey data from the Reef Environmental Education Foundation (REEF) program show similar rates of decline for Caribbean electric ray between 1994 and 2004 in eastern Florida and the Florida Keys. The Red List Assessment formed the basis of the petition to list Caribbean electric ray under the ESA.

To fully evaluate the above purported declines in abundance and rarity of the species, the SRT attempted to find any and all abundance data related to the species. This included a review of the known scientific literature, internet searches, and communication with state and Federal resource agencies that monitor fisheries. There are no population size estimates available for Caribbean electric rays. The SRT acquired the original data sets used for the IUCN assessment and conducted an independent analysis of these data. The SRT also considered a variety of other smaller datasets and encounter reports it acquired in forming its conclusions about the abundance and trends of the species. While some of these other data were anecdotal in nature and couldn't be used to statistically assess trends in abundance, the SRT believed they were useful in illustrating recent encounters of the species. Below we provide a summary of each data source considered and of the SRT's associated findings.

Gulf of Mexico SEAMAP

The primary source of fishery independent data reviewed was Gulf of Mexico SEAMAP data. The NMFS Southeast Fisheries Science Center Mississippi Laboratories have conducted trawl surveys in the northern GOM dating back to the 1950s. Early work was exploratory and often only recorded catch of target species. In 1972 a standardized fall trawl survey began as a part of a resource assessment program.

Then in 1982 a standardized summer trawl survey began under the SEAMAP. Finally, in 1987, the SEAMAP was adopted in the fall, thus unifying the two surveys. SEAMAP is a collaborative effort between Federal, state and university programs designed to collect, manage and distribute fishery independent data throughout the region. The primary objective of this trawl survey is to collect data on the abundance and distribution of demersal organisms in the northern GOM. The survey is conducted semi-annually (summer and fall) and provides an important source of fisheries independent information on many commercially and recreationally important species throughout the northern GOM (Pollack and Ingram 2014, Pollack & Ingram 2015). A full description of the historical and current surveys can be found in Nichols (2004) and Rester (2015).

Shepherd and Myers (2005) examined trends in elasmobranch abundance from SEAMAP data using the longest continuous temporal coverage (1972–2002) for the areas between 10 and 110 m in depth near Alabama, Mississippi and Louisiana (*i.e.*, statistical zones 11, 13–16). The authors correctly noted that *N. brasiliensis* has been historically misidentified and is not known to inhabit the GOM. Thus, all *N. brasiliensis* and *Narcine* species identified within the trawl survey data were treated as *N. bancroftii* during the analysis. Using a generalized linear modeling approach to correct for factors unrelated to abundance, Shepherd and Myers (2005) reported a decline of 98 percent since the baseline abundance of Caribbean electric rays in 1972 in the northern GOM, *i.e.* the number of Caribbean electric rays documented in the survey that year.

The SRT also used a generalized linear model approach in its re-analysis of the Gulf SEAMAP data. In statistics, a covariate is a variable that is possibly predictive of the outcome under study. Covariates considered in the analysis that may have affected abundance include year, area, water depth, and time-of-day. Irrespective of statistical methodology, the major difference between Shepherd and Myers (2005) and the analysis conducted by the SRT is the former did not take into account major changes in survey design and how they would affect the relative abundance of electric ray. There also was an apparent misunderstanding of how the catch was sorted.

Because there were major changes in survey design and survey coverage between 1972–1986 and 1987–2013 (Pollack and Ingram 2014), the SRT determined that using one continuous time series as Shepherd and Myers (2005) did was inappropriate. Instead, the SRT used three separate time series: Fall SEAMAP 1972–1986, Fall SEAMAP 1988–2013, and Summer SEAMAP 1982–2013. The Fall SEAMAP 1987 trawl survey was omitted from analysis because the cruise track differed from that of all the other surveys (counter-clockwise around the northern GOM and missed half of the area off Texas due to weather). The SRT extended the analysis of these survey data 11 years beyond the analysis by Shepherd and Myers (2005), to reflect the best available data and the most complete representation of abundance over time in the survey. Similar to Shepherd and Myers (2005), all *N. brasiliensis* and *Narcine (I, sp.* were treated as *N. bancroftii* for this analysis.

The abundance index constructed for Fall SEAMAP 1972–1986 was limited to NMFS statistical zones 11, 13, 14 and 15 (Figure 1). Sampling outside of these zones was inconsistent; therefore, the analysis was limited to this core area. In addition, all stations deeper than 75 m were removed from the dataset since there were no records of Caribbean electric ray occurring at those depths from any year of the survey. There are, in actuality, only two records in the entire SEAMAP data set of Caribbean electric ray occurring beyond 36.5 m, one in 1972 at 42 m and one in 1975 at 64 m (depths for these stations were verified by the NOAA National Geophysical Data Center, *http://www.ngdc.noaa.gov/mgg/coastal/crm.html*). The second index constructed was Fall SEAMAP 1988–2013. Following the methods outlined for the Fall SEAMAP survey, data for this index were limited to NMFS statistical zones 10–21 (excluding 12), and at stations shallower than 31 m. The third index constructed was Summer SEAMAP 1982–2013. Again following the methods outlined for the previous time series, data for this index were limited to NMFS statistical zones 10—21 (excluding 12), and at stations shallower than 33 m.

There were no discernable trends in relative abundance (CPUEs) of Caribbean electric ray in any of the three Gulf of Mexico SEAMAP indices. All three time series analyzed were relatively flat with peaks in abundance scattered throughout the abundance trend. Within the northern Gulf of Mexico 9,876 tows were included in the analysis, with 624 Caribbean electric rays captured. Most captures occurred off the coast of Louisiana and Texas. Shepherd and Myers (2005) indicated that only 78 individuals were captured from 1972–2002. However, the SRT identified 351 individuals recorded from the same time period, more than four times as many. Shepherd and Myers' (2005) exclusion of data off Texas explains this partly, but the discrepancy also reflects their lack of understanding of how the data were sampled (See "sampled versus select" discussion in Carlson *et al.* 2016). The distribution of Caribbean electric ray seems to be heavily concentrated along the barrier islands around south Texas and Mississippi and Louisiana. However, off the coast of Mississippi and Louisiana the survey is conducted from the National Oceanic and Atmospheric Administration (NOAA) Ship *Oregon II*, which cannot fish in waters shallower than 9 m due to the vessel's draft. Presently, efforts are being made to include waters as shallow as two fathoms (4 m) in the sampling universe, but there are only a few research vessels that can sample that shallow. With the proportional allocation of stations by NMFS statistical zone, very few stations may end up in these shallow depths in future survey years. The SRT noted this could lead to a decrease in Caribbean electric rays captured by the survey in the future because SEAMAP is no longer sampling their habitat and therefore would not reflect abundance changes. Overall, the SRT concluded the Caribbean electric ray is a rare species to encounter during the trawl surveys due to their shallow-water habitat and the inability of research vessels to sample that habitat.

South Atlantic SEAMAP

The SRT also reviewed South Atlantic SEAMAP data. A similar SEAMAP survey occurs in the Atlantic Ocean off the southeastern U.S. East Coast. Samples are collected by trawl from the coastal zone of the South Atlantic Bight between Cape Hatteras, North Carolina, and Cape Canaveral, Florida. Multi-legged cruises are conducted in spring (early April–mid-May), summer (mid-July—early August), and fall (October–mid-November). Stations are randomly selected from a pool of stations within each stratum. The number of stations sampled in each stratum is determined by optimal allocation. From 1990–2000, the survey sampled 78 stations each season within 24 shallow water strata. Beginning in 2001, the number of stations sampled each season in the 24 shallow water strata increased to 102, and strata were delineated by the 4-m depth contour inshore and the 10-m depth contour offshore. In previous years (1990–2000), stations were sampled in deeper strata with station depths ranging from 10 to 19 m in order to gather data on the reproductive condition of commercially important penaeid shrimp. Those strata were abandoned in 2001 in order to intensify sampling in the shallower depth-zone. Further details are available in Eldridge (1988).

Neither we nor the SRT could find a reference or analysis to support the IUCN Red List assessment's statement regarding high rates of decline in Caribbean electric rays in U.S. coastal areas between Cape Canaveral, Florida and Cape Hatteras, North Carolina. The SRT used a generalized linear modeling approach to correct for factors unrelated to abundance to standardize the South Atlantic SEAMAP data following methods similar to the GOM SEAMAP data. Covariates considered in this analysis that may have affected abundance include year, season, area, and sampling statistical zone. Time of day was not included as a covariate as data were discontinuous due to most participating vessels not conducting 24-hour operations. The abundance trend for this time series was flat with peaks in abundance of different magnitudes found every 5–10 years. The data showed high inter-annual variability in Caribbean electric ray catches in the survey, and catches were very low throughout, but there was no trend in the catch rates suggestive of a decline in Caribbean electric rays.

REEF Data

The REEF (*www.reef.org*) is a dataset that is composed of more than 100,000 visual surveys conducted by volunteer divers during their daily dive activities. This data set has been previously used for evaluating species abundance trends (*e.g.,* Ward-Paige *et al.* 2010 and references therein) and was referenced in the petition as evidence of the low occurrence of Caribbean electric rays along the east coast of Florida, the GOM, and the northwestern Caribbean.

The IUCN had cursorily reviewed 1994–2004 REEF data for apparent trends, but had not conducted a thorough analysis. Because these visual surveys vary in duration, location and diver skill level (experience, including experience in species identification), the SRT applied a generalized linear model to examine standardized rates of change in sighting frequency as an index of abundance. The SRT considered area as a covariate based on 8 major sampling areas from the REEF database: Gulf of Mexico, east coast of Florida, the Florida Keys, the Bahamas (including Turks and Caicos), and the northwestern Caribbean (including Cuba, the Cayman Islands, Jamaica, Haiti/Dominican Republic), Greater Antilles (Puerto Rico to Grenada), Continental Caribbean (Belize-Panama), and Netherland Antilles. The SRT also considered skill level of the diver (experienced or novice), the bottom type, year, season, water temperature and water visibility as covariates.

In the REEF database, Caribbean electric rays were observed on 476 out of 119,620 surveys (0.4 percent). Caribbean electric rays were observed throughout the survey area with sighting records averaging 10–18 percent of the total number of fish in the Antilles, Bahamas, Florida and Central America. Positive occurrences were lowest in the northwest Caribbean Sea and Gulf of Mexico. The average depth where diver sightings occurred was about 5 meters generally over a habitat where a diver recorded a variety of individual habitats. The final covariates included in the model were year, area and bottom type. The trend in number of occurrences was relatively flat and similar to the other data series that showed high fluctuation across years. Due to the low encounter rate, there was high uncertainty in the abundance trend.

The SRT found that relative abundance fluctuated dramatically between years, but found no trend. The final model selected contained year, area and bottom type as covariates with the trend in occurrences relatively flat with the number of encounters rapidly fluctuating over the time series.

State Agency Data

As noted earlier, the SRT sought additional datasets that were not included in the IUCN Red list Assessment or the petition. Fishery independent data sets with Caribbean electric ray records were obtained from Texas Parks and Wildlife Department (TPWD) and Florida Fish and Wildlife Research Institute (FFWRI). The North Carolina Department of Environment and Natural Resources (NCDENR) also provided the SRT with the 6 records it had from all of its fishery-dependent and -independent programs combined.

The TPWD fishery-independent nearshore Gulf trawl survey is the only TPWD program that catches *Narcine bancroftii* somewhat regularly. Trawl collections did not begin coast-wide until 1982 in bays and 1986 in the GOM. Trawl sampling in Sabine Lake began in January 1986, and in East Matagorda Bay in April 1987. The trawl sampling program began in the Texas Territorial Sea (within 16.7 kilometers (km) of shore) in 1984 off Port Aransas (24.1 km either side of each jetty) and was expanded to similar areas off the Sabine Pass, Galveston, Port O'Connor, and Port Isabel jetties in January 1986 (sampling off Port Isabel was restricted to 48.2 km north of the Rio Grande River) (Matlock 1992).

TPWD provided trawl data for the three Gulf areas that encounter Caribbean electric rays, *i.e.,* Aransas Pass, Matagorda, and Santiago Pass (Mark Fisher, TPFWD, pers. comm. to Jennifer Lee, NMFS SERO, July 31, 2014). Data from Aransas Pass and Matagorda show increases in abundance especially since early 2000. The trend in abundance for Santiago Pass increases until the late 1990s, then decreases to its original level at the start of the time series. Santiago Pass Caribbean electric ray catches were about 0.1/hour from 1985–1990, increased to 0.4/hour from 1991–2004, then declined back to 0.1/hour from 2005–present.

The FFWRI's fisheries independent monitoring program uses a stratified-random sampling design to monitor fish populations of specific rivers and estuaries throughout Florida. They use a variety of gears to sample, including small seines, large seines, and otter trawls. The program has long-term data sets for Apalachicola (since 1998), Cedar Key (since 1996), Tampa Bay (since 1989), and Charlotte Harbor (since 1989) along the GOM and Tequesta (since 1997) and Indian River Lagoon (since 1990) on the Atlantic Coast.

Despite the large geographic area sampled and the extensive sampling efforts over time, the FFWRI fisheries independent monitoring program has collected very few Caribbean electric rays to date (*i.e.,* 34 specimens). Of these, 13 Caribbean electric rays were collected from Apalachicola (*i.e.,* 2 per year in 1998, 2004, and 2012; 1 per year during 2000–2002 and 2006–2008, and 2010), 15 were collected from Cedar Key (1 per year during 2001–2002 and 2008, 5 in 2004, 2 per year in 2009 and 2012, and 3 in 2013); 4 were collected from Tequesta (2 in 1998, and 2 in 2009), and 1 was collected from each of Tampa Bay (1990) and Indian River Lagoon (1994). The SRT determined it was not appropriate to analyze these data points further due to the rarity of this species within their samples.

The SRT also considered the NCDENR data. The SRT determined it was not appropriate to analyze these data points further due to the extreme rarity of this species' occurrence (*i.e.,* 6 records) within their samples.

Shrimp Observer Program

The Southeast Fisheries Science Center, Galveston Laboratory, began placing at-sea observers on commercial shrimping vessels in 1992 in the U.S. southeastern region through a cooperative voluntary research effort. In July 2007, a mandatory Federal observer program was implemented to characterize the U.S. Gulf of Mexico penaeid shrimp fishery, and in June 2008, the mandatory program expanded to include the South Atlantic penaeid and rock shrimp fisheries. The program was initiated to identify and minimize the impacts of shrimp trawling on federally managed species. The specific objectives are to (1) estimate catch rates during commercial shrimping operations for target and non-target species, including protected species by area, season and depth; and (2) evaluate bycatch reduction devices designed to eliminate or significantly reduce non-targeted catch. During the voluntary research effort, several different projects were initiated. One project, referred to as a characterization, involved identifying all species in a subsample from one randomly selected net. In the mandatory shrimp observer program, there are approximately 30 species (common, federally managed, etc.) that are selected and subsampled from every sampled net, but other species, including Carribbean electric rays, are only grouped into broad categories (*e.g.,* crustaceans, inverts, finfish).

Data associated with commercial trawl bycatch of Caribbean electric rays (recorded as *Narcine brasiliensis*—Ray, Lesser Electric) in the eastern GOM and off the east coast of the United States were available from the characterization project conducted in 2001, 2002, 2005, and 2007. A total of 1,150 trawls were observed, and the catch was sorted in its entirety to the species level. Across all years, 28 Caribbean electric rays were captured during 4,016.6 hours of trawl effort, with 387 and 763 trawls being observed off the east coast and in the northern GOM, respectively. Due to the low occurrence of Caribbean electric rays, the SRT chose not to develop an index of abundance for this species from these data. The SRT believed the low number of animals captured across all years would make the index relatively uninformative. These data were evaluated in considering bycatch as a potential other manmade factor that may threaten the species.

Anecdotal Reports

In addition to the datasets reviewed above, the SRT found anecdotal accounts of Caribbean electric rays through various other sources. Many of these additional anecdotal accounts are from YouTube videos by beach goers or forum discussions by boaters and fishermen who encountered the species along the northern Gulf Coast. There are also anecdotal reports by divers around south Florida, along the Atlantic coast, and throughout parts of the Caribbean. A researcher at Auburn University provided anecdotal accounts of Caribbean electric rays along the Fort Morgan Peninsula in Alabama. The researcher observed large numbers of Caribbean electric rays during late summer to early fall over 3 years (2011–2013) of sampling in that particular area during that particular time of year (Dr. Ash Bullard, to Jennifer Lee, NMFS, pers. com, August 15, 2014). The most common anecdotal encounters are sightings. The sightings typically describe the number of Caribbean electric rays observed at one time as very abundant (*e.g.,* "lots," "everywhere"). One anecdote notes that when you know what to look for they can be seen everywhere. The SRT noted while these reports cannot be used to analyze trends in abundance, they illustrate that people continue to encounter the species in coastal areas around the GOM, South Atlantic, and Caribbean and that when they do the species appears to be locally abundant.

Conclusion

Based on all times series analyzed by the SRT, including those used to support the listing petition, the SRT found no evidence of a decline in Caribbean electric ray. Differences in reported trends are related to the more robust analysis used by the SRT in the status review. Moreover, the preliminary analyses in our 90-day finding used only ratio estimators, and we did not have the raw data to derive the confidence interval. No discernable trends in abundance of the Caribbean electric ray were detected in any of the three Gulf of Mexico SEAMAP indices or the South Atlantic SEAMP index. The SRT noted the number of encounters did dramatically fluctuate over each time series, but that it was not surprising based on the species' apparent clustered but patchy distribution over shallow, sandy habitats as documented repeatedly in the literature. As additional support for this characterization, the SRT noted that recent encounters documented through anecdotes indicate the Caribbean electric ray is fairly abundant in specific habitats while consistently absent from others. The SRT was unable to find any historical or current abundance information outside of U.S. waters for the Caribbean electric ray. A non-commercial species, there are no statistics on Caribbean commercial fishery catches or on efforts that would enable an assessment of the population.

Threats Evaluation

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The SRT concluded that man-made activities that have the potential to impact shallow sandy habitats include dredging, beach nourishment, and shoreline hardening projects (*e.g.,* groins). These types of activities can negatively impact Caribbean electric rays by removing habitat features (*e.g.,* alteration or destruction of sand bars) and affecting prey species. For example, annelids that Caribbean electric rays prey on are killed or otherwise directly or indirectly affected by large dredge-and-fill projects (Greene 2002).

The SRT determined that coastal habitats in the United States are being impacted by urbanization. Coastal habitats in the southern United States, including both the areas along the Atlantic and GOM, have experienced and continue to experience losses due to urbanization. For example, wetland losses in the GOM region of the United States averaged annual net losses of 60,000 acres (24,281 hectares) of coastal and freshwater habitat from 1998 to 2004 (Stedman and Dahl 2008). Although wetland restoration activities are ongoing in this region of the United States, the losses outweigh the gains, significantly (Stedman and Dahl 2008). These losses have been attributed to commercial and residential development, port construction (*e.g.,* dredging, blasting, and filling activities), construction of water control structures, modification to freshwater inflows (*e.g.,* Rio Grande River in Texas), and oil and gas related activities.

The oil and gas industry may affect marine resources in a variety of ways, including increased vessel traffic, the discharge of pollutants, noise from seismic surveys, and decommissioning charges. Although routine oil and gas drilling activities generally occur outside of the known depth range of the species, miles of pipelines associated with oil and gas activities may run through Caribbean electric ray habitat. The SRT concluded that the effect or magnitude of effects on Caribbean electric ray habitat from oil and gas activities is unknown. The largest threat is the release of oil from accidental spills. While safety precautions are in place to prevent the probability of spills and to decrease the duration of spills, these events still occur. In the GOM, the Deepwater Horizon oil spill was an unprecedented disaster, both in terms of the area affected and the duration of the spill. The Deepwater Horizon incident resulted in injuries to a wide array of resources and habitat across the Northern Gulf of Mexico from Texas to Florida, including shoreline beaches and sediments, organisms that live on and in the sand and sediment, and fish and shellfish and other invertebrates that live in the water in nearshore ocean-bottom habitats (NOAA 2015, *http://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan/*). While there has been no production of oil along the Atlantic coast of the United States to date, there remains the possibility of production in the future.

The SRT reported on NOAA's Restoration Center's involvement in ongoing coastal restoration activities throughout the southeastern United States. In 2010, NOAA funded coastal restoration activities in Texas and Louisiana using appropriations from The American Recovery and Investment Act of 2009. In Louisiana, where 25 square miles (64.7 square kilometers) of wetlands are lost per year, funding from the Coastal Wetlands Planning, Protection and Restoration Act helps to implement large-scale wetlands restoration projects, including barrier island restoration and terrace and channel construction.

The SRT anticipated an increase in large-scale restoration projects in the GOM to mitigate the adverse effects of the Deepwater Horizon oil spill and foster restoration of coastal habitat, including those used by the Caribbean electric ray. Numerous large coastal restoration projects in the GOM are expected to be funded by the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act, Natural Resource Damage Assessment, and Clean Water Act settlement agreements related to the Deepwater Horizon oil spill. Many additional restoration projects will also be funded by the Gulf of Mexico Energy Security Act, beginning in Fiscal Year 2017.

While fewer in number, restoration efforts are also expected along coastal areas of the South Atlantic states. For example, funding is expected to be available to support comprehensive and cooperative habitat conservation projects in Biscayne Bay located in south Florida, as one of NOAA's three Habitat Focus Areas.

The SRT concluded the geographic areas in which the Caribbean electric ray occurs are being impacted by human activities. Despite ongoing and anticipated efforts to restore coastal habitats of the GOM and Atlantic off the Southeastern United States, coastal habitat losses will continue to occur in these regions as well as throughout the Caribbean electric ray's entire range. However, the SRT could find no information on specific effects to the Caribbean electric ray beyond broad statements on the impacts to coastal habitat resulting from development and oil and gas exploration. Data are lacking on impacts to habitat features related to the Caribbean electric ray and/or threats that result in curtailment of the Caribbean electric ray's range. In October 2015, NOAA published a Programmatic Damage Assessment and Restoration Plan (PDARP) and Draft Programmatic Environmental Impact Statement, which considers programmatic alternatives to restore natural resources, ecological services, and recreational use services injured or lost as a result of the Deepwater Horizon oil spill. The PDARP presents data on impacts to nearshore habitats and resources, but there are no data specific to Caribbean electric rays.

As discussed above, anthropogenic impacts to shallow, soft bottom habitats have been occurring for decades and are expected to continue into the future indefinitely. However, there is no available information that indicates that the Caribbean electric ray has been adversely affected by impacts to the coastal soft bottom habitats they prefer. Sand substrate is not limiting throughout the Caribbean electric ray's range, and the limited data available on the species' movements indicate they do travel between areas with suitable habitat. The SRT concluded that predictions of coastal habitat losses adversely impacting the Caribbean ray in the future would be speculative.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The SRT details how McEachran and Carvalho (2002) reported for the Narcinidae family that "flesh of the tail region may be marketed after removal of the electric organs in the larger species, but is generally considered to be mediocre in quality." The SRT notes that in the species-specific account for Caribbean electric ray, McEachran and Carvalho (2002) reported that "the tail region may be consumed as food and considered of good quality, but it is not targeted regularly by fisheries in the Western Central Atlantic."

The SRT found no evidence of commercial or recreational harvest of the species. Interest in the species by those who detect it in the surf zone is largely one of curiosity. As Caribbean electric rays are generally nocturnal and spend daylight hours buried under the sand, they likely go undetected by the general public. Recreational fishermen who are gigging for flounder at night are most likely to encounter this species. The SRT noted there are some anecdotal reports of recreational surf fishermen capturing them in dip-nets; however, available data indicate that captured individuals are released.

Scientific research on Caribbean electric rays has been sparse. Rudloe (1989a) collected and studied the ecology of Caribbean electric rays from March 1985 to March 1987, to assess the feasibility of its use in biochemical and neurophysiological research. Rudloe (1989a) reported catching 3,913 rays at several stations from Cape San Blas to Alligator Point, Florida, during this time period. Of these, 3,229 were retained, 455 were tagged and released, and 229 were released untagged due to small size. Funding for research was discontinued after these 2 years of sampling.

The SRT uncovered only a few additional studies involving the Caribbean electric ray that post-date the Rudloe study (Dean and Motta 2004a, b; Dean *et al.* 2005, 2006; Tao 2013). Dr. Mason Dean led a study on Caribbean electric ray husbandry (Dean *et al.* 2005) and three studies on jaw morphology and feeding behavior (Dean and Motta 2004a, b; Dean *et al.* 2006). For these studies, samples were collected using a trawl off Cape Canaveral on the east coast of Florida (41 individuals total) and in the northeast portion of the GOM (6 individuals); six individual specimens preserved at the Florida Museum of Natural History that had been collected from Little St. George Island, Florida were also used. Tao (2013), as a Ph.D. candidate at Auburn University, analyzed the blood vascular systems of ten Caribbean electric rays captured in the northern GOM off Alabama for bacteria. The Bullard Laboratory at Auburn University provided the samples for that study, subsequently releasing them alive after collecting external parasites (Dr. Ash Bullard, Auburn University pers. comm. to J. Lee, NMFS, August 15, 2014). Bullard Laboratory at Auburn University sampled an unknown number of additional Caribbean electric rays in accordance with its state collection permit; no record was kept of the number of Caribbean electric rays observed in the field or the total number of individuals examined. A few researchers from the GOM expressed interest in studying the species in the future, but the SRT did not uncover nor are we aware of any directed studies on Caribbean electric rays at this time.

Captive display of Caribbean electric rays in public aquaria is extremely rare. Due to their selective food habits (*i.e.,* live polychaete worms) and feeding behavior, they are not easy to keep in aquaria (Rudloe 1989b, Dean *et al.* 2005). The 2008 American Elasmobranch Society International Captive Elasmobranch Census documented two male electric rays and one female electric ray in captivity. They were recorded as *Narcine brasiliensis* and were in captivity at a single aquarium. The SRT was unable to determine if these animals were still in captivity or the location of this aquarium. Nevertheless this serves as the only record of electric rays in aquaria.

The Gulf Marine Specimens Laboratory sells 6–24 cm wild caught Caribbean electric rays for $126 (*http://www.gulfspecimen.org/specimen/fish/sharks-and-rays/*). However, no more than a few are sold annually, and the cost of collection and delivery greatly reduces the likelihood of their use as student specimens (Jack Rudloe pers. comm. to J. Lee, NMFS, August 15, 2014).

The species has apparent fidelity for specific, localized habitats, thus targeting Caribbean electric rays could adversely affect the population. However, the SRT found no information to indicate that commercial, recreational, scientific, or educational overutilization of Caribbean electric rays has occurred or is occurring. Further, based on the information presented above, the SRT did not expect overutilization by any specific industry in the future.

C. Competition, Disease and Predation

The available data reviewed by the SRT on competition for Caribbean electric ray prey species or other resources, and disease of and predation on Caribbean electric rays, are summarized in the Life History, Biology, and Ecology Section. The SRT found no information to indicate that competition for Caribbean electric ray prey species or other resources (*e.g.,* sandy substrate habitat) is negatively affecting the Caribbean electric ray abundance or survival. The SRT also found no information indicating that predation or disease is impacting Caribbean electric ray abundance and survival. Given the lack of data, the SRT concluded that predictions of whether competition, predation, or disease, may impact the Caribbean electric ray in the future would be entirely speculative.

D. Inadequacy of Existing Regulatory Mechanisms

The SRT evaluated this factor in terms of whether existing regulations may be inadequate to address potential threats to the species. The SRT concluded that although there were no species-specific regulations, there is no evidence that the lack of such is having a detrimental effect on the Caribbean electric ray.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

There are a variety of other natural and manmade factors that may affect the Caribbean electric ray and thus the continued existence of this species. Factors reviewed by the SRT included the species' life history and habitat use, natural events such as extreme tidal or red tide events, bycatch in commercial fisheries, and climate change.

Life History and Habitat Use

Rudloe (1989a) believed the species was potentially vulnerable to overharvest as a result of its low rate of reproduction and localized distribution. Caribbean electric rays reproduce annually (Rudloe 1989a, Moreno *et al.* 2010) with brood sizes ranging from 1–14 young (Bigelow and Schroeder 1953, de Carvalho *et al.* 1999, Moreno *et al.* 2010). While it is generally believed that elasmobranchs exhibit life history traits that make them more susceptible to exploitation (*e.g.,* low fecundity, late age of maturity, slow growth), the limited evidence on Caribbean electric ray life-history traits and population parameters (*e.g.,* mature by age 2, females reproduce every year) likely place the species among those elasmobranchs that are more productive. Therefore, the SRT did not consider the species to be vulnerable due to its rate of reproduction. The SRT did believe the species' patchy distribution and fidelity for specific habitats increases vulnerability, but they did not find evidence of this vulnerability having detrimental effects on the Caribbean electric ray. Thus they believed there was no basis to conclude these traits would increase extinction risk into the future.

Natural Events

Red tide (*Karenia brevis*) impacts many species of fish and wildlife in the GOM and along the Florida coast. *Karenia brevis* produces brevetoxins capable of killing fish, birds, and other marine animals. While red tide events can cause deaths of aquatic species, the SRT has no information on the extent to which red tides may be affecting the Caribbean electric ray. The SRT did not find any reports of red tide resulting in Caribbean electric ray mortalities.

There are a couple of reports of mass strandings of electric rays resulting from extremely low tides. The National Park Service at Padre National Seashore reported documenting a dozen or so dead electric rays in the tidal zone of Padre Island, Texas, after an extremely low tide event in the fall. Showing no signs of trauma or disease, officials at the National Park Service at Padre National Seashore attributed the mortalities to the extreme low tide leaving them stranded. The SRT concluded that such events have always occurred occasionally and are expected to continue to occur in the future without affecting overall population abundance.

Bycatch in Commercial Fisheries

Caribbean electric rays have been incidentally captured by commercial fisheries targeting other species, specifically those fisheries using trawl gear. The likelihood and frequency of exposure to bycatch in fisheries is generally a function of (1) the extent of spatial and temporal overlap of the species and fishing effort, and (2) the likelihood of an interaction resulting in capture and the extent of injury from capture.

As stated earlier, data associated with commercial trawl bycatch of Caribbean electric ray in the eastern GOM and off the east coast of the United States are available from the NMFS Observer Program. During 2001, 2002, 2005 and 2007, 1,150 trawls were observed and the catch was sorted in its entirety to the species level. Across all years, 28 Caribbean electric rays were captured during 4,016.6 hours of trawl effort. NMFS observed 387 trawls off the east coast and 763 trawls in the northern GOM over this time period. Trawl duration ranged from 0.1 to 11 hours (mean = 3.48 hours, S.D. = 1.41) and occurred at depths ranging from 0.6 to 71.1 m (mean = 15.08, S.D. = 9.04). In the combined areas there were 0.0070 individuals caught per hour of trawling. Examining area specific Caribbean electric ray catch rates, there were 0.0171 and 0.0015 individuals caught per hour off the east coast and in the GOM, respectively. For trawls with positive catch, there was no significant relationship between trawl duration and the number of individuals captured (F = 0.01, P = 0.92), consistent with what would be expected for a species with a patchy distribution. Based on the number of trawls associated with Caribbean electric ray captures (n = 10) and the total number of trawls observed (n = 1150), the probability of capturing Caribbean electric rays off the east coast and in the GOM is 0.0087 (C.V. = 0.3148).

Acevedo *et al.* (2007) reported on 99 shrimp trawls in the Caribbean Sea off the northern coast of Colombia from

August to November 2004. These trawls were conducted at depths ranging from 14–72 m. Elasmobranch fishes were captured in 30 of the 99 trawls, including 6 Caribbean electric rays. The six specimens were reported for the months of August and September, the only months in which the species was taken.

The SRT believes the capture of six Caribbean electric rays is likely the result of their patchy distribution and not reflective of overall Colombian fleet annual catch per unit of effort levels. The SRT noted that there are few areas of suitable habitat for the species off northern Colombia because the bottoms are rocky or coralline, and that this also makes most areas in that area unsuitable for trawling. Based on that information, the SRT concluded that it did not believe the documented bycatch is particularly notable or cause for concern.

The lack of sandy bottom habitat in northern Colombia could also mean that Caribbean electric rays and trawling effort may overlap more in that particular area. However, the SRT did not conclude that documented bycatch in Colombia raises concerns about the status of the species.

Overall, the SRT concluded there is no evidence that the bycatch of Caribbean electric ray occurring in U.S. or foreign fisheries, including the Colombia trawl fisheries, has had any past impact on Caribbean electric rays. Given that declines have not been documented in U.S. waters where data are available, there is no reason to suspect that declines are occurring elsewhere in the species' range. The SRT further found there is no basis to conclude that operations of these fisheries indefinitely into the future would result in a decline in Caribbean electric ray abundance.

Climate Change

The Intergovernmental Panel on Climate Change has stated that global climate change is unequivocal (IPCC 2007) and its impacts to coastal resources may be significant. There is a large and growing body of literature on past, present, and future impacts of global climate change induced by human activities, *i.e.,* global warming mostly driven by the burning of fossil fuels. Some of the likely effects commonly mentioned are sea level rise, increased frequency of severe weather events, and change in air and water temperatures. NOAA's climate change web portal provides information on the climate-related variability and changes that are exacerbated by human activities (*http://www.climate.gov/#understandingClimate*). The EPA's climate change Web page also provides basic background information on these and other measured or anticipated effects (*http://www.epa.gov/climatechange/index.html*).

The SRT concluded that climate change impacts on Caribbean electric rays cannot currently be predicted with any degree of certainty. Climate change can potentially affect the distribution and abundance of marine fish species. Distributional changes are believed to be highly dependent on the biogeography of each species, but changes in ocean temperature are believed likely to drive poleward movement of ranges for tropical and lower latitude organisms (Nye *et al.* 2009). Evidence of climate change-induced shifts in distribution of marine fish has been recorded in the western Atlantic, the Gulf of Mexico, and in the Northeastern Atlantic (Fodrie *et al.* 2010, Murawski 1993, Nye *et al.* 2009). The SRT predicts that increased water levels and warmer water temperatures will have little impact on the species and, if anything, could possibly expand its range off the U.S. east coast. Given what the SRT knows about the species' current depth distribution, the SRT concluded it is unlikely that sea level rise will have adverse effects. Similarly, because the range of the Caribbean electric ray seems to be restricted to warm temperate to tropical water temperature, the SRT concluded increased water temperatures are unlikely to negatively influence the species and could possibly expand their northern range in the future.

Extinction Risk Analysis

In addition to reviewing the best available data on potential threats to Caribbean electric rays, the SRT considered demographic risks to the species similar to approaches described by Wainwright and Kope (1999) and McElhany *et al.* (2000). The approach of considering demographic risk factors to help frame the discussion of extinction risk has been used in many status reviews (*http://www.nmfs.noaa.gov/pr/species*). In this approach, the collective condition of individual populations is considered at the species level, typically according to four demographic viability risk criteria: Abundance, population growth, spatial structure/connectivity, and diversity/resilience. These viability criteria reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Because the information on Caribbean electric ray demographics and threats is largely sparse and non-quantitative, the SRT used qualitative reference levels for its analysis to the extent consistent with the best available information. The three qualitative 'reference levels' of extinction risk relative to the demographic criteria used were high risk, moderate risk, and low risk as defined in NMFS' Guidance on Responding to Petitions and Conducting Status Reviews under the ESA. A species or distinct population segment (DPS) with a high risk of extinction was defined as being at or near a level of abundance, productivity, spatial structure, and/or diversity that places its continued persistence in question. The demographics of a species or DPS at such a high level of risk may be highly uncertain and strongly influenced by stochastic or depensatory processes. Similarly, a species or DPS may be at high risk of extinction if it faces clear and present threats (*e.g.,* confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create present and substantial demographic risks.

A species or DPS was defined as being at moderate risk of extinction if it is on a trajectory that puts it at a high level of extinction risk in the foreseeable future (see description of "High risk" above). A species or DPS may be at moderate risk of extinction due to projected threats or declining trends in abundance, productivity, spatial structure, or diversity.

A species or DPS was defined as being at low risk of extinction if it is not at moderate or high level of extinction risk (see "Moderate risk" and "High risk" above). A species or DPS may be at low risk of extinction if it is not facing threats that result in declining trends in abundance, productivity, spatial structure, or diversity. A species or DPS at low risk of extinction is likely to show stable or increasing trends in abundance and productivity with connected, diverse populations.

The SRT evaluated the current extent of extinction risk based on Caribbean electric ray relative abundance trends data and the likelihood the species will respond negatively in the future to potential threats. The foreseeable future is linked to the ability to forecast population trends. The SRT considered the degree of certainty and foreseeability that could be gleaned concerning each potential threat, whether the threat was temporary or permanent in nature, how the various threats affect the life history of the species, and whether observations concerning the species' response to the threat are adequate to establish a trend.

In evaluating the foreseeable future, it is not just the foreseeability of the threats, but also the foreseeability of the impacts of the threats on the species that must be considered. Thus, the nature of the data concerning each threat and the degree to which reliable predictions about their impacts on the species could be made were assessed. There are no data documenting discernable decreases in relative abundance trends or other data showing that Caribbean electric ray populations have been impacted by identified potential threats. The magnitude of potential threats and factors described above were generally expected to remain unchanged. Thus, the SRT determined it was unable to specify a definitive time frame to define the foreseeable future for evaluating the degree to which demographic factors and potential threats contribute to the species' risk of extinction.

Qualitative Risk Analysis of Demographics

The SRT's ability to analyze many of the specific criteria embedded in the risk definitions for demographic factors was limited. There are no data available on age-at maturity or natural mortality that would be necessary to determine population growth rates. Population structure and levels of genetic diversity in Caribbean electric rays are completely unknown, with no genetic studies ever conducted, even for the species' taxonomy.

The SRT determined that the relative abundance trend information for Caribbean electric rays represents a low risk to the species' continued existence now and into the future. The Caribbean electric ray has a broad range in warm temperate to tropical waters of the western Atlantic from North Carolina to Florida (its presence in the Bahamas is unknown, however), the Gulf of Mexico and the Caribbean Sea to the northern coast of South America. Within its range, it has a patchy distribution within relatively shallow waters, often within the surf zone. There are no estimates of absolute population size over the species' range; however, analyses of available long-term datasets indicate that the trend in relative abundance is relatively flat with abundance dramatically fluctuating over each time series. The SRT did not find this surprising given the patchy distribution over specific habitat types.

The SRT found very little information available on the life history of Caribbean electric ray. There are no age and growth studies for this species but anecdotal studies suggest rapid growth. Size at maturity for females is estimated at about 26 cm TL (Funicelli 1975). Caribbean electric rays are estimated to reach reproductive size by the end of their first year, and the reproductive cycle is annual (Rudloe 1989a). The brood size ranges from 1–14 depending on the study. While it is generally regarded that elasmobranchs exhibit life history traits (*e.g.,* low fecundity, late age of maturity, slow growth) that make them more susceptible to exploitation, the limited evidence on Caribbean electric ray life-history traits and population parameters likely place the species among those elasmobranchs that are more productive. Thus, the SRT believed that the species likely will be able to withstand moderate anthropogenic mortality levels and have a higher potential to recover from exploitation and stochastic events. The SRT concluded that available information on the species' demographic characteristics currently represent a low risk of extinction, and risks are unlikely to increase into the future.

The SRT found no evidence that Caribbean electric rays are at risk of extinction due to a change or loss of variation in genetic characteristics or gene flow among populations currently or into the future. This species is found over a broad range and appears to be opportunistic and well adapted to its environment. In addition, the risk of extinction due to the loss of spatial structure and connectivity for the Caribbean electric ray is low. Caribbean electric rays have a relatively broad distribution in the western Atlantic Ocean generally in habitats dominated by sand bottom substrate. Sand substrate is not limiting throughout the range, and the limited data available on species movements indicate individuals do travel between areas with suitable habitat.

Qualitative Risk Analysis of Threats

Regarding habitat threats to the species, the SRT concluded that man-made activities that have the potential to impact shallow sandy habitats include dredging, oil and gas pipelines and pipeline development, beach nourishment, and shoreline hardening projects (*e.g.,* groins). These types of activities could negatively impact Caribbean electric rays by removing habitat features they require. Although specific data are lacking on impacts to the Caribbean electric ray, it is reasonable to anticipate that coastal development will continue perpetually and may damage habitat within the species' range. However, the species does occur over a broad range and most impacts to the coastal zone have more significantly occurred to wetlands, coral reefs and mangrove ecosystems, rather than sand bottom habitats. For these reasons, the SRT concluded that the Caribbean electric ray is at low risk of extinction due to destruction and modification of habitat currently and in the future.

The SRT determined impacts from overutilization are unlikely to cause the species to be at heightened risk of extinction. There is little to no direct harvest for the species. The SRT considered bycatch in commercial fisheries as one of the natural or manmade factors it reviewed. Caribbean electric rays are very uncommon as bycatch in trawl and gillnet fisheries. Moreover, many states throughout their U.S. range (*e.g.,* Florida, Texas, and Georgia) have banned gillnet fishing in state waters which will further reduce the likelihood of bycatch as a negative impact on the continued existence of Caribbean electric rays. The level of bycatch from U.S. shrimp trawl fisheries is believed to be low primarily because they operate mainly in areas where Caribbean electric rays are not found. The SRT concluded that overutilization presented a low risk of extinction. The risk associated with the level of bycatch from U.S. shrimp trawl fisheries is unlikely to change in the future given the areas where the fishery mainly operates are also unlikely to change. Since 2001, there has been a dramatic decrease in otter trawl effort in southeast U.S. shrimp fisheries, which has been attributed to low shrimp prices, rising fuel costs, competition with imported products, and the impacts of 2005 and 2006 hurricanes in the Gulf of Mexico. Although otter trawl effort from year to year may fluctuate some, there are no data to indicate that otter trawl effort levels will increase in the future from recent levels. Also, the species has been subject to bycatch for centuries and does not appear to have experienced any measurable decline during those earlier periods, based on the relative abundance trends data available. The SRT also determined the risk to Caribbean electric ray from disease or predation is also low now; in the absence of data on past or current impacts to the species, the SRT concluded that no impacts can be foreseen into the future.

Overall Risk of Extinction Throughout Its Range Analysis

In this section we evaluate the overall risk of extinction to the Caribbean electric ray throughout its range. In determining the overall risk of extinction to the species throughout its range, we considered available data on the specific life history and ecology of the species, the nature of potential threats, any known responses of the species to those threats, and population abundance trends. We considered the information summarized in the status review report (Carlson *et al.* 2015).

The SRT determined it could not define a foreseeable future for their extinction risk. However, we think the available information on abundance trends can provide an appropriate horizon over which to consider how the species may respond to potential impacts into the future. The fisheries-independent datasets from which we evaluated abundance trends span time periods of 11 to 34 years, during which abundance trends were flat, with scattered and varied peaks in abundance. All of the potential threats evaluated by the SRT were occurring at the same time that the fishery independent surveys were performed. All of the activities that constitute potential threats were also projected by the SRT to continue at their current levels into the future. Therefore, we feel it is appropriate to consider the foreseeable future to be the next few decades, or 20 to 30 years, for Caribbean electric ray. Although the lifespan of Caribbean electric ray is not known, based on their early size of maturity and apparent annual reproduction, 20 to 30 years would encompass several generations of the species and thus any adverse responses to threats would be discernible over this timeframe.

We concur with the SRT's analysis and risk conclusions for potential threats and for demographic factors. The threat and demographic factors identified present either no risk or at most low risk to Caribbean electric ray, now and over the foreseeable future. There is no information indicating that any potential threats have adversely impacted Caribbean electric ray in the past, and there is no basis to predict that potential threats will adversely impact the species over the next 20 to 30 years. The species has not faced threats in the past, and is not expected to face any over the foreseeable future, that would result in declining trends in abundance, spatial structure, or diversity.

Based on all time series of data analyzed by the SRT, including those used to support the listing petition, there is no evidence of a decline in relative abundance of Caribbean electric rays. No discernable trends in abundance of Caribbean electric ray were detected in any of the available datasets. Number of encounters did dramatically fluctuate over each time series, but we believe this reflects the species' apparent clustered but patchy distribution over shallow, sandy habitats. Anecdotal accounts of recent encounters indicate they are abundant in specific habitats while consistently absent from others. Our 90-day determination that the petitioned action may be warranted due to impacts from incidental take in fisheries was based on one study (Shepherd and Myers 2005) indicating that nearshore shrimp trawl fisheries operating in the northern Gulf of Mexico may be negatively impacting the species in that region. However, further examination of the dataset by the SRT revealed that Shepherd and Myers (2005) did not take into account major changes in survey design and how they would affect the relative abundance of Caribbean electric rays, and did not understand how the catch was sorted, thus Shepherd and Myers (2005) underestimated the number of individual reports in the data. The SRT's analysis showed no discernable trends in abundance of Caribbean electric ray in any of the three Gulf of Mexico Southeast Area Monitoring and Assessment Program indices.

There is no evidence that potential threats comprising ESA section (4)(a)(1) factors (A)–(C) or (E) have contributed to heightened extinction risk and endangerment of the species. Incidental take in fisheries was the only activity we initially believed might be resulting in adverse impacts to the species due to the decline presented in Shepherd and Myers (2005). However, after further review we believe there is no evidence indicating that nearshore shrimp trawl fisheries operating in the northern Gulf of Mexico or in foreign waters (*e.g.*, Colombia shrimp trawls) are negatively impacting the species in those areas.

Neither we nor the SRT identified any threats under the other Section 4(a)(1) factors that may be causing or contributing to heightened extinction risk of this species. Therefore, we conclude that inadequate regulatory mechanisms (Section (4)(a)(1)(D)) are also not a factor affecting the status of Caribbean electric ray.

So to summarize, we did not find that any of the demographic factors or Section 4(a)(1) factors contribute significantly to the extinction risk of this species throughout its range, now or in the foreseeable future. Based on our consideration of the best available data, as summarized here and in Carlson *et al.* (2016), we determine that the present overall risk of extinction to the Caribbean electric ray throughout its range is low, and will remain low over the foreseeable future, and thus listing as threatened or endangered under the ESA throughout its range is not warranted. We also considered whether any threats or demographic factors elevated risks to the species when considered cumulatively. With no evidence of any decline in the species or other negative impacts to life history characteristics, there is no evidence to suggest that potential threats and demographic factors cumulatively are currently elevating the species' risk of extinction, or will elevate extinction risk throughout its range over the foreseeable future.

Significant Portion of Its Range (SPOIR)

Because we found that listing the species as endangered or threatened throughout its range was not warranted, we then conducted a "significant portion of its range analysis." The U.S. Fish and Wildlife Service (FWS) and NMFS—together, "the Services"—have jointly finalized a policy interpreting the phrase "significant portion of its range" (SPOIR) (79 FR 37578; July 1, 2014). The SPOIR policy provides that: (1) If a species is found to be endangered or threatened in only a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply across the species' entire range; (2) a portion of the range of a species is "significant" if the species is not currently endangered or threatened throughout its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future, throughout all of its range; and (3) the range of a species is considered to be the general geographical area within which that species can be found at the time we make any particular status determination.

We evaluated whether substantial information indicated that (i) portions of the Caribbean electric ray's range are significant and (ii) the species occupying those portions is in danger of extinction or likely to become so within the foreseeable future (79 FR 37578; July 1, 2014). Under the SPOIR policy, both considerations must apply to warrant listing a species as threatened or endangered throughout its range based upon its status within a portion of the range.

The historical range of the Caribbean electric ray is in western Atlantic shallow coastal waters, from North Carolina through the northern coast of Brazil (Carvalho *et al.* 2007). Individual populations are localized and do not migrate extensively, but do move onshore and offshore at least seasonally, crossing between barrier beach surf zones and sandbars adjacent to passes associated with estuarine barrier islands

(Rudloe 1989a). Movements also include travel east and west between sand bar habitats (Rudloe 1989a). Geographically as well as quantitatively, those parts of the electric ray's range that are within U.S. waters (Gulf of Mexico, South Atlantic) may each constitute a significant portion of the Caribbean electric ray's range because if the population were to disappear from either portion, it could result in the rest of the species being threatened or endangered. However, there is no information to indicate that the members of the species in either the Gulf of Mexico or the South Atlantic have different demographic viability or are facing different or more intense threats to the point where they would be threatened or endangered in these portions. Because a portion must be both significant and threatened or endangered before we can list a species based on its status in a significant portion of its range, we do not find that listing the Caribbean electric ray is threatened or endangered based on its status in a significant portion of its range is warranted.

Final Listing Determination

Section 4(b)(1) of the ESA requires that NMFS make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information including the petitions, public comments submitted on the 90-day finding (79 FR 4877; January 30, 2014), the status review report (Carlson *et al.* 2015), and other published and unpublished information. We considered each of the statutory factors to determine whether it contributed significantly to the extinction risk of the species. As previously explained, we could not identify a significant portion of the species' range that is threatened or endangered. Therefore, our determination is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout its entire range.

We conclude that the Caribbean electric ray is not presently in danger of extinction, nor is it likely to become so in the foreseeable future throughout all of its range. Accordingly, the Caribbean electric ray does not meet the definition of a threatened species or an endangered species and our listing determination is that the Caribbean electric ray does not warrant listing as threatened or endangered at this time.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 18, 2016.

Samuel R. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–17397 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE750

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Monday, August 8, 2016 through Thursday, August 11, 2016. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at: Hilton Virginia Beach Oceanfront, 3001 Atlantic Avenue, Virginia Beach, VA 23451, telephone: (757) 213–3000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's Web site when possible.)

Monday, August 8, 2016

Executive Committee

The Executive Committee will hold a closed session and then open to review the letter regarding governance of summer flounder, scup, and black sea bass and coordination of research with SAFMC.

Unmanaged Forage Amendment Final Action

Review comments received during public hearings, review Ecosystem and Ocean Planning Advisory Panel and Committee recommendations for final action, and select preferred alternatives.

Ecosystem Approach to Fisheries Management (EAFM) Guidance Document

Review, finalize, and approve EAFM Guidance Document and review and discuss potential framework for integrating ecosystem interactions into fisheries assessment and management.

Tuesday, August 9, 2016

Demersal Committee Meeting as a Committee of the Whole With the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass and Bluefish Boards

Summer Flounder Allocation Project Report

A presentation will be received on the summer flounder allocation model and initial findings.

Summer Flounder Amendment Alternatives

Review and provide feedback on the list of amendment issues and Fishery Management Action Team recommendations.

Summer Flounder Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2017–2018 specifications and recommend any changes if necessary.

Black Sea Bass Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2017 specifications and recommend any changes if necessary.

Wednesday, August 10, 2016

Demersal Committee Meeting as a Committee of the Whole With the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass and Bluefish Boards

Scup Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2017–18 specifications and recommend any changes if necessary.

Bluefish Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding 2017–18 specifications and recommend any changes if necessary.

Executive Committee Report

Policy on Fishing Impacts on Habitat

Review and consider approval of draft policy.

For-Hire Electronic VTR Framework Meeting 2

Review Framework document and analyses to address issues raised at the June Council meeting, summary of constituent input, and summarize revisions made. Also, select final alternative(s), and discuss the implementation process.

Law Enforcement Reports

Reports will be received from the NOAA Office of Law Enforcement and the U.S. Coast Guard.

Thursday, August 11, 2016

Swearing In of New Council Members/ Election of Officers

Business Session

Organization Reports; Liaison Reports; Executive Director's Report; Science Report; Committee Reports; and Continuing and New Business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 19, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17379 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE662

Marine Fisheries Advisory Committee

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: Nominations are being sought for appointment to a new task force of the Marine Fisheries Advisory Committee (MAFAC) to support its advisory work for the Secretary of Commerce on living marine resource matters. The task force will focus on providing information and advice on the establishment of long-term goals for salmon and steelhead in the Columbia River Basin. National Marine Fisheries Service (NMFS) will appoint the members in consultation with MAFAC and they will serve for a term of up to two (2) years. The terms would begin in December 2016.

DATES: Nominations must be postmarked or have an email date stamp on or before September 6, 2016.

ADDRESSES: Nominations should be sent to Katherine Cheney, NMFS West Coast Region, 1201 Northeast Lloyd Boulevard, Suite 1100, Portland, OR 97232 or to *katherine.cheney@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Cheney, (503) 231–6730; email: *katherine.cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. MAFAC is establishing a Columbia Basin Partnership Task Force to assist it in the development of long-term goals for salmon and steelhead in the Columbia River Basin, which is critical to the mission and goals of the NMFS.

Columbia Basin Partnership Task Force

This Columbia Basin Partnership Task Force is being created for state, tribal and stakeholder input to MAFAC to support development of quantitative goals for Columbia River Basin salmon and steelhead at the species, stock, major population group (MPG), and population levels. The goals will be collaboratively developed to meet conservation needs while also providing harvest (including those necessary to satisfy tribal treaty rights). Shared goals will enhance engagement and understanding by providing a concise, common definition of success, consistent means to measure progress, and improved public support for work across the Columbia River Basin.

The scope of the Columbia Basin Partnership Task Force will fall within the objectives and scope of the MAFAC; is more comprehensive than any prior goal-setting effort in the Basin; and will encompass:

- All Endangered Species Act-listed and non-listed salmon and steelhead in the Columbia Basin, above and below Bonneville Dam.
- Ocean, mainstem, and tributary fisheries that harvest Columbia Basin stocks, including commercial, recreational, and tribal fisheries.
- Multiple geographic scales (Basin-wide, species, and major population group).
- All impacts across the salmon and steelhead life-cycle (*e.g.,* habitat, hatchery, hydro, and harvest).
- Consideration of ecological conditions and of current and future habitat capacity.

The Task Force will report to MAFAC and will not provide advice or work product directly to NMFS. Recommendations generated by this Task Force's efforts will not result in any regulatory decision, obligate any party to undertake certain activities, or diminish treaty/trust obligations. The input of the Task Force will support efforts that seek common solutions that work for all sovereigns and stakeholders. The strength of the Task Force will hinge on the breadth of regional participation, collaboration, and commitment.

This Task Force will consist of 25–35 individuals who have demonstrated subject matter expertise regarding salmon and steelhead biology and management in the Columbia River Basin, as well as the interest and ability to work collaboratively and respectfully with other sovereigns and stakeholders to find solutions. Individuals should represent the geographic diversity of the Columbia River Basin, as well as the diversity of interests including state and tribal fish managers; NGO/environmental interests; commercial fishing interests; recreational fishing interests; utility interests; river industry interests; agricultural/irrigation interests; and local watershed or recovery planning interests. At least one member of MAFAC will serve as a member of the Task Force.

It is intended that the Task Force be established for an initial period of two (2) years with a possibility of extending that term if deemed necessary by NMFS and MAFAC. Task Force members should be able to fulfill the time commitments required for quarterly meetings (mostly by webinar or teleconference and potentially in-person). Members of the Task Force are not compensated for their services, but will upon request be allowed to travel and per diem expenses as authorized by 5 U.S.C. 5701 *et seq.*

Nomination Materials

Each nomination submission must include: resume or curriculum vitae of the nominee and a cover letter, not to exceed 3 pages, that describes the nominee's qualifications and interest in serving on the Task Force and how the nominee meets the following criteria:

- Is able to broadly represent his or her interests and constituency that he/she affiliates with as they are affected by salmon and steelhead management in the Columbia River Basin.
- Has organizational and/or subject matter expertise regarding salmon and steelhead management in the Columbia River Basin.
- Has demonstrated a willingness and ability to work collaboratively and respectfully with other stakeholders to find solutions.
- Contributes to representation of the geographic diversity of the Columbia River Basin.

Self-nominations are acceptable. The following contact information should accompany each nominee's submission: full name, address, telephone number, fax number, and email address. Nominations should be sent to (see **ADDRESSES**) and must be received by September 6, 2016. Information about MAFAC, its Committee Charter, current membership, and activities can be viewed on the NMFS' Web page at *www.nmfs.noaa.gov/mafac.htm.*

Dated: July 19, 2016.

Jennifer Lukens,

Director, Office of Policy, National Marine Fisheries Service.

[FR Doc. 2016–17398 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that was furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: 8/21/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
8415–00–NIB–1053—Jacket, Tanker, USMC, Pewter Gray, Size 38R
8415–00–NIB–1054—Jacket, Tanker, USMC, Pewter Gray, Size 38L
8415–00–NIB–1055—Jacket, Tanker, USMC, Pewter Gray, Size 38XL
8415–00–NIB–1056—Jacket, Tanker, USMC, Pewter Gray, Size 40S
8415–00–NIB–1057—Jacket, Tanker, USMC, Pewter Gray, Size 40R
8415–00–NIB–1058—Jacket, Tanker, USMC, Pewter Gray, Size 40L
8415–00–NIB–1059—Jacket, Tanker, USMC, Pewter Gray, Size 40XL
8415–00–NIB–1092—Jacket, Tanker, USMC, Pewter Gray, Size 42S
8415–00–NIB–1093—Jacket, Tanker, USMC, Pewter Gray, Size 42R
8415–00–NIB–1094—Jacket, Tanker, USMC, Pewter Gray, Size 42L
8415–00–NIB–1095—Jacket, Tanker, USMC, Pewter Gray, Size 42XL
8415–00–NIB–1096—Jacket, Tanker, USMC, Pewter Gray, Size 44S
8415–00–NIB–1097—Jacket, Tanker, USMC, Pewter Gray, Size 44R
8415–00–NIB–1098—Jacket, Tanker, USMC, Pewter Gray, Size 44L
8415–00–NIB–1099—Jacket, Tanker, USMC, Pewter Gray, Size 44XL
8415–00–NIB–1100—Jacket, Tanker, USMC, Pewter Gray, Size 46S
8415–00–NIB–1101—Jacket, Tanker, USMC, Pewter Gray, Size 46R
8415–00–NIB–1102—Jacket, Tanker, USMC, Pewter Gray, Size 46L
8415–00–NIB–1103—Jacket, Tanker, USMC, Pewter Gray, Size 46XL
8415–00–NIB–1104—Jacket, Tanker, USMC, Pewter Gray, Size 48R
8415–00–NIB–1105—Jacket, Tanker, USMC, Pewter Gray, Size 48L
8415–00–NIB–1106—Jacket, Tanker, USMC, Pewter Gray, Size 48XL
8415–00–NIB–1107—Jacket, Tanker, USMC, Pewter Gray, Size 50R
8415–00–NIB–1108—Jacket, Tanker, USMC, Pewter Gray, Size 50L
8415–00–NIB–1109—Jacket, Tanker, USMC, Pewter Gray, Size 50XL
8415–00–NIB–1110—Jacket, Tanker, USMC, Pewter Gray, Size 52R
8415–00–NIB–1111—Jacket, Tanker, USMC, Pewter Gray, Size 52L
8415–00–NIB–1112—Jacket, Tanker, USMC, Pewter Gray, Size 54R
8415–00–NIB–1113—Jacket, Tanker, USMC, Pewter Gray, Size 54L

Mandatory Source(s) of Supply: Lions Services, Inc., Charlotte, NC
Contracting Activity: Marine Corps Systems Command, Quantico, VA

NSN(s)—Product Name(s): 1005–01–511–2152—Sling, M–249 Small Arms
Contracting Activity: Defense Logistics Agency Land and Maritime

NSN(s)—Product Name(s): 1005–01–478–0848—Sling, Combat, Close Quarters
Mandatory Source(s) of Supply: Best Industries for the Blind Inc., Runnemede NJ
Contracting Activity: W40M NORTHEREGION CONTRACT OFC

NSN(s)—Product Name(s): 1095–00–223–7164—Scabbard, Bayonet-Knife
Contracting Activity: W40M NORTHEREGION CONTRACT OFC

NSN(s)—Product Name(s):
7930–01–494–2985—Ecolab Omni-Pak, Floor Cleaner/ Stripper, Heavy-Duty, Water Soluble, .5 oz.
7930–01–380–8404—EcoLab Water Soluble Cleaners/Detergents

Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: General Services Administration, Fort Worth, TX

NSN(s)—Product Name(s):
7930–01–600–5752—Starter Kit, Disinfectant Cleaner-Degreaser Cartridge Concentrate
7930–01–600–5749—Refills, Disinfectant Cleaner-Degreaser Cartridge Concentrate

Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activities:
Department of Veterans Affairs
General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s):
7930–01–380–8350—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 1 gal
930–01–380–8475—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 55 gal
7930–01–380–8500—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 5 gal
Mandatory Source(s) of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: General Services Administration, Fort Worth, TX
NSN(s)—Product Name(s): 7045–01–392–6514—Greendisk
Mandatory Source(s) of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: Janitorial/Custodial Service
Mandatory for: VA Primary Care Clinic, 3715 Municipal Drive, McHenry, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: Department of Veterans Affairs

Service Type: Employment Placement Service
Mandatory for: Defense Logistics Agency: National Human Resource Offices, Fort Belvoir, VA
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, New York, NY

Service Type: Administrative Service
Mandatory for: General Services Administration: Public Building Service Property Development, 230 S. Dearborn Street, Chicago, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Administrative/General Support Service
Mandatory for: GSA, Central Field Office, 536 S. Clark Street, Chicago, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Administrative/General Support Service, Chaplain's Office, Great Lakes Naval Training Center, Great Lakes, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: DOD/Department of the Navy

Service Type: Administrative Support Service
Mandatory for: GSA, Tampa Property Management Office, 501 E Polk Street, Tampa, FL
Mandatory Source(s) of Supply: Tampa Lighthouse for the Blind, Tampa, FL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Assembly, Kit Camouflage Supp. Service
Mandatory for: Department of the Army: Red River Army Depot, 469 Avenue L, Texarkana, TX
Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: Dept of the Army, W40M Northern Region Contract Ofc

Service Type: Switchboard Operation Service
Mandatory for: Cannon Air Force Base, Cannon AFB, NM
Mandatory Source(s) of Supply: ENMRSH, Inc., Clovis, NM
Contracting Activity: Dept of the Air Force, FA4855 27 SOCONS LGC

Service Type: Transportation/Vehicle Operation Service
Mandatory for: Brooks Air Force Base, Brooks AFB, TX
Mandatory Source(s) of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: Dept of the Air Force, FA8901 311 ABG PKB

Service Type: Storage & Distribution of Tape, Webbing Service
Mandatory for: Defense Supply Center Philadelphia, 2800 S 20th Street, Philadelphia, PA
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: Defense Logistics Agency Troop Support

Service Type: Fabrication of Tool Box Liners Service
Mandatory for: Fleet and Industrial Supply Center, P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DOD/Department of the Navy

Service Type: Repair of Small Hand Tools Service
Mandatory for: Fleet and Industrial Supply Center, P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Tampa Lighthouse for the Blind, Tampa, FL
Contracting Activity: DOD/Department of the Navy

Service Type: Parts Machining Service
Mandatory for: Fleet and Industrial Supply Center, P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DOD/Department of the Navy

Service Type: Parts Machining Service
Mandatory for: Naval Supply Center (Bldg 467): Puget Sound, 467 W Street, Bremerton, WA
Mandatory Source(s) of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DOD/Department of the Navy

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–17388 Filed 7–21–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete services from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/21/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 6/17/2016 (81 FR 39630), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Types: Library Service
Mandatory for: Travis Air Force Base, Travis Air Force Base, CA
Beale Air Force Base, Beale Air Force Base, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Family Housing Maintenance Service
Mandatory for: Travis Air Force Base, Travis AFB, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Baggage Inspection Service
Mandatory for: Travis Air Force Base: Air Passenger Terminal, Travis Air Force Base, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Furnishings Management Service
Mandatory for: Travis Air Force Base, Travis Air Force Base, CA
Mandatory Source(s) of Supply: Pacific Coast Community Services, Richmond, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Linen Service
Mandatory for: Hickam Air Force Base, Hickam Air Force Base, HI
Mandatory Source(s) of Supply: Network Enterprises, Inc., Honolulu, HI
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Facilities Management Service
Mandatory for: Television Audio Support Activity (TASA), McClellan AFB, CA
Mandatory Source(s) of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Repair of Air Cargo Top & Side Nets Service
Mandatory for: Travis Air Force Base, Travis AFB, CA
Mandatory Source(s) of Supply: Fontana Resources at Work, Fontana, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–17389 Filed 7–21–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0074, Core Principles and Other Requirements for Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (Commission) is announcing an opportunity for public comment on the renewal of the collection of certain information by the agency. Under the Paperwork Reduction Act (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments in connection with part 37 of the Commission's regulations, which requires certain recordkeeping and reporting information collections for swap execution facilities (SEFs).

DATES: Comments must be submitted on or before September 20, 2016.

ADDRESSES: You may submit comments, identified by "Renewal of Collection Pertaining to Core Principles and Other Requirements for Swap Execution Facilities" by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Steven A. Haidar, Attorney-Advisor, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5611; email: *shaidar@cftc.gov,* and refer to OMB Control No. 3038–0074.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the existing collections of information listed below.

Title: Core Principles and Other Requirements for Swap Execution Facilities (OMB Control No. 3038–0074). This is a request for extension of currently approved information collections.

Abstract: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added new section 5h to the Commodity Exchange Act (CEA) to impose requirements concerning the registration and operation of SEFs, which the Commission has incorporated in part 37 of its regulations.[1] These information collections are needed for the Commission to ensure that SEFs (and entities applying for SEF registration) comply with these requirements. Among other requirements, part 37 of the Commission's regulations imposes SEF registration requirements for a trading platform or system, obligates SEFs to provide transaction confirmations to swap counterparties, and requires SEFs to comply with 15 core principles.[2]

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[1] In general, this OMB control number covers the information collections in part 37 of the Commission's regulations, including subpart A and the SEF core principles (*i.e.*, subparts B and C). However, any information collections related to § 37.10 of the Commission's regulations are subject to a separate information collection with OMB control number 3038–0099 (Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade).

[2] These 15 core principles include: Enforcing rules; listing contracts for trading that are not readily susceptible to manipulation; monitoring trading to prevent market manipulation; obtaining information; adopting position limits or position accountability levels; adopting rules to enforce financial integrity of swaps transactions entered on or through the SEF; adopting rules to provide for the exercise of emergency authority, in consultation with the Commission; making public information

Continued

With respect to these information collections, the Commission invites comments on:

- Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: Part 37 of the Commission's regulations result in information collection requirements within the meaning of the PRA. These regulations impose requirements concerning the registration and operation of SEFs, including requiring SEFs to continually be in compliance with 15 core principles. The Commission initially estimated that each respondent SEF would incur annually 308 burden hours in connection with collections of information and that there would be 35 SEF respondents for an aggregate of 10,780 annual burden hours.[4] Based on the Commission's observation of registered SEFs' operations and compliance with part 37's requirements, the Commission is increasing this estimate and now estimates that each respondent SEF would incur annually 1,000 burden hours. Additionally, the Commission notes that rather than the initial estimate of 35 SEFs, there currently are 22 SEFs registered with the Commission. The recurring annual burden hours for each SEF are increased as noted in the applicable table below.

Furthermore, in its initial PRA analysis, the Commission did not explicitly distinguish the non-recurring burden hours related to the registration process from the Commission's estimate of the recurring, annual burden hours, but rather provided an aggregated number.[5] Based on the experience gained by the Commission during the SEF permanent registration review process, the Commission estimates that each SEF incurs approximately 300 non-recurring burden hours in connection with completing the registration process. The non-recurring burden hours for each SEF are noted in the applicable table below.

RECURRING ANNUAL BURDEN HOURS FOR SEFS

Respondents/Affected Entities	SEFs.
Estimated number of respondents	22.[6]
Estimated annual burden hours per respondent SEF	1000 burden hours.
Estimated total annual burden on respondents	22,000 hours.[7]
Frequency of collection	Once per trade day.[8]

NON-RECURRING ANNUAL BURDEN HOURS FOR SEFS

Respondents/Affected Entities	SEFs.
Estimated number of respondents	4.[9]
Estimated annual burden hours per respondent SEF	300.
Estimated total annual burden on respondents	1,200.[10]
Frequency of collection	Initial registration.

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regarding prices and volume on a timely basis; maintaining records of all activities of the business of the contract market in a form and manner acceptable to the Commission for five years; avoiding rules that result in unreasonable restraints of trade or anticompetitive burden on trading; enforcing rules to minimize conflicts of interest in its decision-making process; maintaining adequate financial resources; establishing system safeguards; and designating a chief compliance officer.

[3] 17 CFR 145.9.

[4] *See* 78 FR 33476, 33549. (35 SEFs × 308 burden hours = 10,780 hours per SEF).

[5] *See id.*

[6] In the part 37 final rule release, the Commission estimated that there would be 35 SEFs. *See id.* The Commission, however, notes that 22 SEFs are currently registered with the Commission. Accordingly, the revised aggregate burden hour estimate accounts for both the increased annual burden hours estimate to 1,000 hours per SEF as well as the decrease in the number of SEFs from 35 to 22.

[7] 1,000 average recurring burden hours per respondent SEF × 22 registered SEFs = 22,000 total burden hours for all registered SEFs.

[8] The Commission notes that respondent SEFs also are required to provide 4 quarterly reports and one annual report as part of their recurring information collection obligations.

[9] Based on the number of applicants that have applied for permanent SEF registration since the Commission first granted permanent registration status to SEFs on January 22, 2016, the Commission expects to receive 4 applications per year for permanent SEF registration.

[10] 300 average initial burden hours per respondent SEF × 4 anticipated SEF applicants = 1,200 total burden hours incurred for all anticipated SEF applicants.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: July 19, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–17374 Filed 7–21–16; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2016–0026]

RIN 3170–AA40

Request for Information on Payday Loans, Vehicle Title Loans, Installment Loans, and Open-End Lines of Credit

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for information.

SUMMARY: Congress established the Bureau of Consumer Financial Protection (Bureau or CFPB) in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). As set forth in section 1021 of the Dodd-Frank Act, the Bureau's purpose is to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. In discharging this obligation, the CFPB seeks feedback on practices and products that are related to but may not be addressed in the Bureau's concurrently published Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Concurrent Proposal). Specifically, in this Request for Information (RFI), the Bureau seeks comment on: Potential consumer protection concerns with loans that fall outside the scope of the Bureau's Concurrent Proposal but are designed to serve similar populations and needs as those loans covered by the proposal; and business practices concerning loans falling within the Bureau's Concurrent Proposal's coverage that raise potential consumer protection concerns that are not addressed by the Concurrent Proposal. The Bureau seeks comment from the public about these consumer lending practices to increase the Bureau's understanding of and support for potential future efforts, including but not limited to future rulemakings, supervision, enforcement, or consumer education initiatives. Where the Bureau requests evidence, data, or other information regarding a particularly concern about consumer protections, the Bureau does not seek information that directly identifies an individual consumer.

DATES: Comments must be received on or before October 14, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0026 or RIN 3170–AA40, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0026 or RIN 3170–AA40 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions, or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

Authority: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION: Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) that established the Bureau, part of the Bureau's mission is to empower consumers to take control over their economic lives. Section 1021(c)(3) of the Dodd-Frank Act provides that one of the primary functions of the Bureau is collecting, researching, monitoring, and publishing information relevant to the function of markets for consumer financial products and services.[1] Specifically section 1022(c)(1) directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services in order to support its rulemaking and other functions.[2] Moreover, the Bureau is charged with using its rulemaking, supervision, and enforcement authorities under Federal consumer financial law to prevent unfair, deceptive, or abusive acts or practices in the consumer financial services markets.[3] In discharging these obligations, the Bureau has studied certain types of loans made to consumers facing liquidity shortfalls, including payday loans, vehicle title loans, and certain types of installment loans. The Bureau also has conducted supervisory examinations of payday lenders and pursued public law enforcement actions against creditors making payday loans, vehicle title loans, and similar forms of credit.

The Bureau is concerned that lenders that make these loans have developed business models that deviate substantially from the practices in other credit markets by failing to assess consumers' ability to repay their loans and by engaging in harmful practices in the course of seeking to withdraw payments from consumers' accounts. The Bureau believes that there may be a high likelihood of consumer harm in connection with these covered loans because many consumers struggle to repay their loans. In particular, many consumers who take out covered loans appear to lack the ability to repay them and face one of three options when an unaffordable loan payment is due: Take out additional covered loans, default on the covered loan, or make the payment on the covered loan and fail to meet other major financial obligations or basic living expenses. Many lenders may seek to obtain repayment of covered loans directly from consumers' accounts. The Bureau is concerned that consumers may be subject to multiple fees and other harms when lenders make repeated unsuccessful attempts to withdraw funds from consumers' accounts.

The Concurrent Proposal generally would cover two categories of loans. First, the proposal generally would cover loans with a term of 45 days or less or loans with multiple advances if each advance is required to be repaid within 45 days. Second, the proposal generally would cover loans with a term greater than 45 days, provided that they (1) have an all-in annual percentage rate greater than 36 percent; and (2) either are repaid directly from the consumer's account or income or are secured by the consumer's vehicle. For both categories of covered loans, the proposal would identify it as an abusive and unfair practice for a lender to make a covered loan without reasonably determining that the consumer has the ability to repay the loan. The proposal generally would require that, before making a covered loan, a lender must reasonably determine that the consumer has the ability to repay the loan. The proposal also would impose certain restrictions on making covered loans when a consumer has or recently had certain outstanding covered loans. The proposal would provide lenders with options to make covered loans without satisfying the ability-to-repay requirements, if those loans meet certain conditions. The proposal also would identify it as an unfair and abusive practice to attempt to withdraw payment from a consumer's account for a covered loan after two consecutive payment attempts have failed. The proposal would require lenders to provide certain notices to the consumer before attempting to withdraw payment for a covered loan from the consumer's account. The Bureau's Concurrent Proposal appears in a separate **Federal Register** notice concurrently published with this RFI. The Bureau is seeking comment on that proposal in the rulemaking docket, which is separate from the docket for this RFI.

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[1] 12 U.S.C. 5511(c)(3).

[2] 12 U.S.C. 5512(c)(1).

[3] 12 U.S.C. 5511(b)(2).

The Bureau is also engaged in pre-rulemaking activity concerning debt collection practices generally and on checking account overdraft services, which some consumers may use in lieu of small-dollar loans. Those practices are not the focus of this RFI. Finally, the Bureau has also proposed to regulate certain credit products offered in conjunction with prepaid accounts, which is also not the focus of this RFI.

The Bureau is aware that the Concurrent Proposal may not address all potential concerns in these markets. Most particularly, while the Bureau has chosen to issue a proposed rule on payday loans and similar forms of credit for public comment, the Bureau is aware that the Concurrent Proposal does not cover all loans made to consumers facing liquidity shortfalls. Such loans may include other high-cost products, where the risks to consumers from making unaffordable payments may be similar to the types of harms detailed in the Concurrent Proposal. The Bureau is specifically seeking to learn more about the scope, use, underwriting, and impact of such products for purposes of determining what types of Bureau action may be appropriate. To protect consumers from unfair, deceptive, or abusive acts or practices, the Bureau is expressly empowered to use all of its authorities, not just rulemaking. Therefore, in this RFI the Bureau is seeking information about certain consumer lending practices to increase the Bureau's understanding of whether there is a need and basis for potential future efforts, including but not limited to future rulemakings, supervisory examinations, or enforcement investigations.

Similarly, the Bureau is aware that the Concurrent Proposal may not address all potentially harmful practices with regard to products that would be covered by the Concurrent Proposal. Specifically, the proposal focuses on lenders' practices with regard to underwriting and attempts to withdraw loan payments from consumers' bank accounts. The Bureau is thus seeking information on other potentially problematic lender practices and consumer protection concerns regarding products that would be covered by the proposal, in order to determine whether additional Bureau actions are warranted.

Accordingly, the Bureau is interested in learning more about potential consumer protection concerns that may not be addressed by the Bureau's Concurrent Proposal. The Bureau encourages comments from the public, including:

- Borrowers and their families;
- Lenders and their investors or employees;
- Debt collectors, payment processors, and other service providers;
- Financial counselors and social workers;
- Pastors, priests, nuns, rabbis, imams, and other clergy or faith leaders;
- Accountants;
- Journalists;
- Consumer advocates;
- Banks, thrifts, and credit unions;
- State, local, and tribal governments;
- Academics including but not limited to psychologists, economists, sociologists, geographers, and historians; as well as
- Any other interested parties.

I. Background

Throughout American history, the Federal government and the States have taken varied approaches to regulating payday and similar forms of credit. Early on, the 13 original American States adopted interest rate limits of between 5 percent and 12 percent per annum in the early years of the Republic.[4] Later entrants into the Union typically followed this pattern and most of these "general usury limits" remained in force throughout the United States during the 19th Century. Later, Congress passed legislation intended to provide protection to consumers in the Wheeler-Lea Act of 1938.[5] The Wheeler-Lea Act amended the Federal Trade Commission (FTC) Act of 1914 to provide the FTC with the authority to pursue unfair or deceptive acts or practices in commerce to protect consumers against oppression that might not amount to common law or criminal fraud.[6]

In the 1960s, Congress began passing a wave of consumer protection laws focused on financial products, beginning with the Consumer Credit Protection Act (CCPA) in 1968.[7] The CCPA included the Truth in Lending Act (TILA), which imposed disclosure and other requirements on creditors.[8] Congress followed the enactment of TILA with several other consumer financial protection laws. For example, in 1970, Congress passed the Fair Credit Reporting Act (FCRA), which promotes the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies, as well as providing consumers access to their own information.[9] In 1974, Congress passed the Equal Credit Opportunity Act (ECOA) to prohibit creditors from discriminating against applicants with respect to credit transactions.[10] In 1977, Congress passed the Fair Debt Collection Practices Act (FDCPA) to promote the fair treatment of consumers who are subject to debt collection activities.[11] Congress has placed limitations on the rates Federal credit unions may impose, generally 15 percent with certain allowance for the NCUA to make adjustments.[12] Congress has established a usury limit for loans to servicemembers. In 2006 Congress established an all-in interest rate limit of 36 percent annual percentage rate (APR) on consumer credit extended to military servicemembers and their dependents and charged the Bureau with enforcing this limit in 2013.[13]

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[4] These State price limits were based on English statutes. Ransom H. Tyler, *A Treatise on the Law of Usury, Pawns or Pledges and Maritime Loans,* at 49–55 (1891). American usury law drew upon an older legal tradition. For example, historians report that the Roman Empire capped interest rates at 12 percent per annum. And, the Code of Hammurabi (c. 1750 BCE) includes an interest rate limit of 33.3 percent for loans payable in grain and a limit of 20 percent on loans payable in silver. Sydney Homer & Richard Sylla, *A History of Interest Rates,* at 30, 49 (3d. ed. 1996).

[5] Wheeler-Lea Act of 1938, Public Law 75–447, 52 Stat. 111 (1938).

[6] Richard A. Posner, The Federal Trade Commission: A Retrospective, 72 Antitrust L.J. 761, 765 (2005).

[7] Consumer Credit Protection Act, Public Law 90–321, 82 Stat. 146 (1968).

[8] 15 U.S.C. 1601

[9] 15 U.S.C. 1681.

[10] 15 U.S.C. 1691.

[11] 15 U.S.C. 1692. Other such Federal consumer protection laws include those enumerated in the Dodd-Frank Act and made subject to the Bureau's rulemaking, supervision, and enforcement authority: Alternative Mortgage Transaction Parity Act of 1982, 12 U.S.C. 3801; Consumer Leasing Act

In addition, in the early 20th Century many States began to adopt small loan laws that allowed licensed lenders to make small consumer loans at interest rates of between 2 and 4 percent per month, or 24 to 48 percent per year[14] A variety of "special" usury limits along these lines proliferated in most States throughout the 20th Century. By 1965, all States limited interest rates on small loans, with an annual rate of 36 percent per annum being the most common ceiling.[15]

In the 1960s, States began passing their own consumer protection statutes modeled on the FTC Act to prohibit unfair and deceptive practices. The FTC encouraged the adoption of consumer protection statutes at the State level and worked directly with the Council of State Governments to draft model legislation that influenced many state consumer protection statutes.[16] Currently, "[e]very state has a consumer protection law that prohibits deceptive practices, and many prohibit unfair or unconscionable practices as well."[17] At the same time that States have become more active in providing substantive consumer protection, there has been some movement away from State regulation of interest rates. In States with usury limits, a majority of State legislatures have created carve outs for payday loans, permitting licensed businesses to make payday loans with average effective interest rates of over 300 percent per annum.[18]

As discussed in greater detail in the Concurrent Proposal, some states and municipalities have set other limits on payday and similar lending. For example, Washington and Delaware have restricted repeat borrowing by imposing limits on the number of payday loans consumers may obtain. Through 2010 amendments to its payday loan law, Colorado no longer permits short-term single-payment payday loans. Instead, in order to charge fees in excess of the 36 percent APR cap for most other consumer loans, the minimum loan term must be six months.[19] The maximum payday loan amount remains capped at $500, and lenders are permitted to take a series of post-dated checks or payment authorizations to cover each payment under the loan, providing lenders with the same access to borrowers' accounts as a single-payment payday loan. At least 35 Texas municipalities have adopted local ordinances setting business regulations on payday lending (and vehicle title lending).[20]

In the wake of the financial crisis, Congress adopted the Dodd-Frank Act. Title X of the Dodd-Frank Act established the Consumer Financial Protection Bureau to regulate the offering and provision of consumer financial products and services under the Federal consumer financial laws.[21] The Dodd-Frank Act defines Federal consumer financial law to include certain enumerated federal consumer laws, including the TILA, FCRA, FDCPA, EFTA as well as Title X of the Dodd-Frank Act itself. Congress provided the Bureau with a range of enforcement and regulatory tools to fulfill its mission. For example, the Bureau has both supervisory and enforcement authority over all banks, savings associations, and credit unions with over 10 billion dollars in assets, as well as over a variety of nondepository financial companies including payday lenders.[22] Congress also provided the Bureau with a range of rulemaking authorities. Section 1022(b) of the Dodd-Frank Act provides that the Bureau's Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasion thereof.[23] Section 1031(b) of the Dodd-Frank Act also provides the Bureau with authority to prescribe rules to identify as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.[24] Rules issued identifying as unlawful

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of 1976, 15 U.S.C. 1667; Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 (except with respect to § 920 of that Act); Fair Credit Billing Act, 15 U.S.C. 1666; Home Mortgage Disclosure Act of 1975, 12 U.S.C. 2801; Home Owners Protection Act of 1998, 12 U.S.C. 4901; Federal Deposit Insurance Act, 12 U.S.C. 1831t (b)–(f); Gramm-Leach-Bliley Act 15 U.S.C. 6802–09 (except with respect to § 505 as it applies to § 501(b) of that Act); Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701; section 626 of the Omnibus Appropriations Act, 2009, 12 U.S.C. 5338; Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601; S.A.F.E. Mortgage Licensing Act of 2008, 12 U.S.C. 5101. Federal consumer protection law also includes the Bureau's authority to take action to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, and abusive acts or practices, Dodd-Frank section 1031, and its disclosure authority, Dodd-Frank section 1032.

[12] 12 U.S.C. 1757(5)(A)(vi).

[13] 10 U.S.C. 987(b), (f)(6). Moreover, Congress has also established criminal laws enforced by the Department of Justice that address some forms of payday and similar credit. First, Congress established a threshold of 45 percent per annum as a limitation in determining whether the government is entitled to a presumption that a debtor believed a creditor used extortionate collection methods in criminal loansharking prosecutions under the Consumer Credit Protection Act. 18 U.S.C. 892(b)(2). And second, the Racketeer Influenced and Corrupt Organizations Act established a federal crime for collecting an unenforceable debt with a price in excess of twice an applicable federal or state usury limit. 18 U.S.C. 1961(6)(B), 1962(c), 1963. *See, e.g.,* U.S. v. *Scott Tucker and Timothy Muir, Sealed Indictment, No. 16 Crim 091 (S.D.N.Y. 2016); Press Release, Department of Justice, U.S. Attorney's Office, Southern District of New York, Manhattan U.S. Attorney Announces Charges Against owner of, and Attorney For, $2 Billion Unlawful Internet Payday Lending Enterprise* (February 10, 2016), *https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-charges-against-owner-and-attorney-2-billion-unlawful.*

[14] Elizabeth Anderson, *Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1910–1940* (March 8, 2006), 16. *See also* David J. Gallert, Walter Stern, and Geoffrey May, *Small Loan Legislation: A History of the Regulation of the Business of Lending Small Sums,* at 89 (1932).

[15] Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion in American Credit Pricing Limits,* 92 Minn. L. Rev. 1110, 1138–1142 (2008).

[16] Dee Pridgen and Richard M. Alderman, *Consumer Protection and the Law* § 2:10 (2015).

[17] *See* Carolyn L. Carter, Nat'l Consumer L. Ctr., *Consumer Protection in the States,* at 5 (2009), *available at https://www.nclc.org/images/pdf/udap/report_50_states.pdf.*

[18] As discussed in further detail within the Concurrent Proposal, there are now 36 States that either have created a carve-out from their general usury cap for payday loans or have no usury caps on consumer loans. The remaining 14 States and the District of Columbia either ban payday loans or have fee or interest rate caps that payday lenders apparently find too low to sustain their business models.

[19] Colo. Rev. Stat. sec. 5–3.1–103. Although loans may be structured in multiple installments of substantially equal payments or a single installment, almost all lenders contract for repayment in monthly or bi-weekly installments. 4 Colo. Code Regs. sec. 902–1, Rule 17(B)1, *available at http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=3842;* Adm'r of the Colo. Unif. Consumer Credit Code, *Colorado Payday Lending—Demographic and Statistical Information July 2000 Through December 2012,* at 15–16 (2014), *available at http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2012.pdf.*

[20] A description of the municipalities is available at Texas Municipal League. An additional 15 Texas municipalities have adopted land use ordinances on payday or vehicle title lending. *City Regulation of Payday and Auto Title Lenders,* Texas Mun. League, *http://www.tml.org/payday-updates (last visited May 6, 2016).*

[21] 12 U.S.C. 5491(a).

[22] 12 U.S.C. 5514(a), 5515, 5516(a)

[23] 12. U.S.C. 5512(b)(1).

[24] 12 U.S.C. 5531(b).

unfair, deceptive, or abusive acts or practices may include requirements for the purpose of preventing such acts or practices.[25] The Bureau also has the authority to prescribe rules to ensure that the features of any consumer financial product or service are fully, accurately, and effectively disclosed to consumers.[26] Finally, the Bureau is also charged with conducting financial education programs to assist consumers in making responsible decisions about financial transactions.[27]

In addition to establishing the Bureau, Title X of the Dodd-Frank Act also prohibits any unfair, deceptive or abusive act or practice in connection with any transaction with a consumer for a consumer financial product or service or the offering of such product or service.[28] The Bureau is charged with conducting examinations of institutions within its jurisdiction for the purpose, among others, of assessing compliance with the requirements of Federal consumer financial laws; [29] this includes assessing compliance with the prohibition on unfair, deceptive and abusive acts and practices. The Bureau is likewise charged with conducting investigations "for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a . . . violation of any provision of Federal consumer finance law," again including the prohibition on unfair, deceptive, or abusive acts or practices in consumer finance markets. Congress specifically provided that "No provision of [Title X] shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law." [30]

The Bureau is aware that the Concurrent Proposal may not address all potential concerns relating to loans made to consumers facing liquidity shortfalls. Most particularly, while the Bureau has chosen to issue a proposed rule on payday, vehicle title, and certain high-cost installment loans, the Bureau is aware that the Concurrent Proposal does not cover all loans made to consumers facing liquidity shortfalls. Such loans may include other high-cost products, where the risks to consumers from making unaffordable payments may be similar to the types of harms detailed in the Concurrent Proposal. The Bureau is specifically seeking to learn more about the scope, use, underwriting, and impact of such products for purposes of determining what types of Bureau action may be appropriate. To protect consumers from unfair, deceptive, or abusive acts or practices, the Bureau is expressly empowered to use all of its authorities, not just rulemaking. Therefore, in this RFI the Bureau is seeking information about certain consumer lending practices to increase the Bureau's understanding of whether there is a need and basis for potential future efforts, including but not limited to future rulemakings, supervisory examinations, or enforcement investigations.

Similarly, the Bureau is aware that the Concurrent Proposal may not address all potentially harmful practices with regard to products that would be covered by the Concurrent Proposal. Specifically, the proposal focuses on lenders' practices with regard to underwriting and attempts to withdraw loan payments from consumers' bank accounts. The Bureau is thus seeking information on other potentially problematic lender practices and consumer protections concerns regarding products that would be covered by the proposal, in order to determine whether additional Bureau actions are warranted.

Accordingly, the Bureau is interested in learning more about potential consumer protection concerns that may not be addressed by the Bureau's Concurrent Proposal.

II. Potential Consumer Protection Concerns With High-Cost Installment Loans and Open-End Lines of Credit Not Covered Within the Bureau's Concurrent Proposal

As detailed in the Concurrent Proposal, the Bureau believes that there may be a high likelihood of consumer harm in connection with loans that would be covered by the Concurrent Proposal. As noted above, the Concurrent Proposal generally would cover loans with a term of 45 days or less or loans with multiple advances if each advance is required to be repaid within 45 days. Second, the Concurrent Proposal generally would cover loans with a term greater than 45 days, provided that they (1) have an all-in annual percentage rate greater than 36 percent; and (2) either are repaid directly from the consumer's account or income (*i.e.*, have a "leveraged payment mechanism" [31]) or are secured by the consumer's vehicle.

Thus, the Bureau's Concurrent Proposal would not cover either closed-end installment loans or open-end lines of credit with durations longer than 45 days with no vehicle title or leveraged payment mechanisms, regardless of the total cost of credit. The Bureau's Concurrent Proposal also would not cover loans that fall within the proposed exceptions, including non-recourse pawn loans, certain money purchase loans, real-estate secured credit, student loans, and credit card loans. In this RFI, the Bureau refers to loans that fall outside the scope of the proposal as "non-covered products."

The Bureau believes that most loans made to consumers facing liquidity shortfalls would fall within the scope of the proposal. As discussed further in the Concurrent Proposal, these consumers tend to have low or non-existent credit scores and limited access to mainstream sources of credit. The loans that are made to them tend to be at a high interest rate and the Bureau believes that, with most of these loans, lenders generally obtain either a security interest in the borrower's vehicle or the ability to secure repayment directly from the consumer's deposit account or paycheck. On the other hand, the Bureau also has identified a limited number of lenders offering non-covered longer duration loans with high annual percentage rates that lack a vehicle security interest or leveraged payment mechanism and that may raise consumer protection concerns.[32]

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[25] 12 U.S.C. 5531(b).

[26] 12 U.S.C. 5532(a).

[27] 12 U.S.C. 5511(b)(1), (c)(1).

[28] 12 U.S.C. 5536(a)(1)(B) ("It shall be unlawful" for any covered person or service provider "to engage in any unfair, deceptive, or abusive act or practice.").

[29] 12 U.S.C. 5515(b)(1)(A).

[30] 12 U.S.C. 5517(o). As discussed in greater detail in the Concurrent Proposal, the Bureau believes the prohibition in this section is reasonably interpreted not to prohibit differential regulation such as certain requirements contained in the Bureau's Concurrent Proposal.

[31] In the Concurrent Proposal, the Bureau refers to methods by which the lender can obtain payment directly "leveraged payment mechanisms." As provided in proposed § 1041.3(c), in general, a lender or service provider would obtain a leveraged payment mechanism if it has the right to initiate a transfer of money, through any means, from a consumer's account to satisfy an obligation on a loan, except that the lender or service provider does not obtain a leverage payment mechanism by initiating a one-time electronic fund transfer immediately after the consumer authorizes the transfer, has the contractual right to obtain payment directly from the consumer's employer or other source of income, or requires the consumer to repay the loan through a payroll deduction or deduction from another source of income.

[32] For example, in New Mexico, Idaho, Utah, and Wisconsin The CashStore offers 140 day installment loans of $500 repayable in cash only with a 780 percent APR. *Cash Store APR And Rate Card Information,* Thecashstore.com, *https://www.cashstore.com/apr-rate-card* (last visited March 24, 2016). In Utah, Mountain Loan Centers, Inc. has offered seven month, 432 percent APR, "signature" loans of $800 with no post-dated check or account access. Mountain Loan Centers, Inc. v. *Audra Crizer, Complaint, Fourth Judicial District Court,* Utah (March 25, 2015). *See also* Mountain Loan Centers, Inc., *Mountain Loan Centers Get $5000! EZ Approval!,* YouTube (Nov. 7, 2011), *https://www.youtube.com/watch?v=PtipWKKOoAo*

The Bureau believes that some non-covered products may be different in significant ways from loans that would be covered under the Concurrent Proposal. For example, in bona fide pawn transactions, borrowers grant a possessory security interest in personal property in exchange for a non-recourse loan. Because these loans are non-recourse and because the consumer turns over physical possession of the collateral to the lender at the outset, the Bureau believes the consumer risks posed by these loans are somewhat different from the consumer risks posed by other high-cost products. In a bona fide pawn loan, the borrower has the option to either repay the loan or permit the pawnbroker to retain and sell the pledged collateral at the end of the loan term, relieving the borrower of any additional financial obligation, and the process of surrendering the item may reinforce to the consumer what the consequences will be if the consumer is later unable to repay the pawn loan.

The Bureau is seeking additional information about forms of non-covered credit offered to the types of consumers who use covered loans to deal with cash shortfalls, including the types and volume of installment and open-end credit products that would not be covered by the Concurrent Proposal and are offered in this market segment, their pricing structures, and lenders' practices with regard to marketing, underwriting, servicing and collections. For example, an installment loan or open-end line of credit without a leveraged payment mechanism or vehicle security interest would be beyond the scope of the Bureau's Concurrent Proposal even if the agreement calls for non-amortizing, interest-only payments and without regard to the cost. Such loans could raise substantial consumer protection concerns and might potentially be unfair, deceptive, or abusive depending on the circumstances, including instances where there are long-term financial hardships imposed by such loans or where consumers fail to understand the payment structure of the loans. Since such loans lack vehicle security or leveraged payment mechanisms, the Bureau is also particularly interested in any other mechanisms or practices that lenders may use with regard to such loans to mitigate the risk that consumers would be unable to repay their loans.

Because Congress has charged the Bureau with protecting consumers from unfair, deceptive, or abusive credit practices, the Bureau is interested in learning more about the potential consumer protection concerns that may arise in high-cost loans that are not covered by the Bureau's Concurrent Proposal. The Bureau is also looking ahead to anticipate potential changes in the consumer lending market in response to both the Concurrent Proposal and other regulatory and economic developments. Accordingly, the Bureau seeks public feedback to better understand the prevalence of problematic business practices in this market.

While the Bureau invites all comments relevant to this general topic, the Bureau specifically invites commenters to address the following questions. With respect to these non-covered, high-cost, longer-duration installment loans and open-end lines of credit that lack vehicle security or leveraged payment features:

1. Is there a viable business model in extending high-cost, non-covered loans for terms longer than 45 days without regard to the borrower's ability to repay the loan as scheduled? If so, what are the essential characteristics of this business model or models and what consumer protection concerns, if any, are associated with such practices? For example:

a. Are there non-covered loan products with particular payment structures that make it viable for a lender to extend loans without regard to the consumer's ability to repay?

b. Are there non-covered loan products with security or possessory interests in products or documents other than the consumer's vehicle (and without leveraged access to the consumer's transaction account) that make it viable for a lender to extend loans without regard to the consumer's ability to repay?

c. Are there particular collection practices that make it viable for lenders to make high-cost, non-covered loans without regard to the consumer's ability to repay?

d. Are there other loan features or practices that make it viable for lenders to extend loans without regard to the consumer's ability to repay?

e. To the extent there are loans made in categories a through d, how prevalent are such practices? How easy is it for consumers to find and obtain such products? To what extent are these loans leading to injury to consumers? To what extent are consumers aware of the costs and risks of such loans?

f. Are there changes in technology or the market that make such practices more likely to develop or spread in the future?

2. To the extent that certain business models enable lenders to extend non-covered loans to consumers facing liquidity shortfalls without regard to the consumer's ability to repay, what factors might limit or encourage growth of these business models going forward?

a. What are the State and Federal regulations that affect their viability and growth?

b. What effect, if any, would the Bureau's Concurrent Proposal, if finalized, have on their viability and growth?

c. Are technology, investment, and other market factors affecting their viability and growth?

d. What factors affect competition in these markets, particularly the emergence of new market players and development of new product alternatives?

3. To what extent are consumers able to protect themselves in the selection or use of products identified in response to questions number 1(a) through 1(d)? For example:

a. What evidence, data, or other information exists with respect to the ability of consumers to shop effectively for products of the type described above and for alternative products that may better serve consumers' needs? Are there currently Web sites or other digital tools that facilitate effective price comparison among lenders offering products designed to serve the needs of liquidity-constrained borrowers, including comparison of prices, prior to surrendering personal information such as names, email addresses, and bank account numbers? Are consumers in search of a loan to meet a liquidity shortfall able to avail themselves of common internet search engines to effectively shop for loans to meet their needs?

b. Are new business entrants in the market for high-cost, non-covered loans able to offer loans at a lower cost than those offered by established lenders? What factors enhance or inhibit the ability of new market entrants to do so? Are new business entrants with lower pricing able to effectively raise customer awareness about the benefits of their products in comparison to established covered or non-covered loans?

c. Are there cognitive, behavioral, or psychological limitations that make it

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(advertisement stating "we don't hold a check and we don't even care if you have a bank account."). And in Missouri Capital Solutions Investments, Inc. (d/b/a Loan Express Co.) has made five month loans of $100 with no account access and an interest rate of 199 percent APR. *Hollins* v. *Capital Solutions Investments, Inc.* 477 SW.3d 19, 21 (Mo. Ct. App. 2015); Defendant's Statement of Uncontroverted Material Facts Supporting Motion for Summary Judgment, Exhibit B–1, Case, *Hollins* v. *Capital Solutions Investments, Inc.*, No. 11SL–CC04216 Div. 7, (Mo. Cir. Ct. St. Louis County, 21st Jud. Cir. Nov. 7, 2012).

more difficult for consumers facing a liquidity crisis to shop effectively for a non-covered loan to meet their needs?

d. Are there marketing practices or loan features that take advantage of these cognitive, behavioral, or psychological limitations?

e. What evidence, data, or other information exists with respect to the existence and prevalence of any such limitations, marketing practices, or loan features?

III. Potential Consumer Harm from Garnishment Orders, Judgment Liens, or Other Forms of Enhanced Collection

As discussed above, the Bureau's Concurrent Proposal would cover high-cost, longer-term loans that include a leveraged payment mechanism or a vehicle security interest and would generally require lenders making such loans to first reasonably determine whether the consumer has the ability to repay the loan.[33] The Bureau anticipates that, if the Concurrent Proposal is finalized, even where lenders do successfully determine a consumer's ability to repay, some consumers will nonetheless end up defaulting on their loans if, for example, the consumer becomes disabled and is unable to work for a prolonged period of time.

The Bureau's Concurrent Proposal does not address the collection practices of lenders making covered loans. The Bureau anticipates that at a future date it will be issuing a proposal to regulate debt collection practices that will apply to the collection of covered and non-covered loans alike. But the Bureau is concerned that there may be certain practices that are more prevalent with respect to high-cost loans made to consumers facing cash shortfalls and that pose serious risks for such consumers. The Bureau is concerned that these practices could become more prevalent with covered or non-covered high-cost loans if the Bureau finalizes the Concurrent Proposal.

In particular, the Bureau seeks information about possible alternatives to leveraged payment mechanisms and vehicle security interests that may exist currently or develop in response to the Bureau's Concurrent Proposal and market or technology changes. For example, the laws of some States allow creditors to sue borrowers over a debt, and subsequently obtain garnishment orders that permit lenders to seize borrowers' wages, bank account funds, or vehicles under some circumstances. The Federal CCPA and implementing regulations issued by the Department of Labor provide some protection for consumers by limiting the amount of wages that can be garnished during a pay period.[34] Moreover, State and Federal due process guarantees as well as debtor asset exemption statutes also provide borrowers with some protection. However, the Bureau's market monitoring and research suggests that State laws vary widely in this regard and may place burdens on consumers that they may not be prepared to meet and that the consumer financial services market has seen substantial and potentially problematic innovation and change in recent years. For example, a recent case in the Missouri Court of Appeals highlights a lender practice of allowing interest and fees to accrue post-default—as discussed further in part V of this RFI—and then suing and obtaining a garnishment order for amounts that a concurring opinion found "shocks the conscience" such as the following seven consumers that "exemplif[ied] the situation of the class action members in this case":

Class member, D.W., took out a $100 loan from CSI. A judgment was entered against him for $705.18; the garnishment is still pending. So far, $3.174.81 has been collected, and a balance of $4.105.77 remains

Class member, S.S., took out an $80 loan from CSI. A judgment was entered against her for $2.137.68; the garnishment is still pending. So far, $5.346.41 has been collected, and a balance of $19,643.48 remains.

Class member, C.R., took out a $155 loan from CSI. A judgment was entered against her for $1.686.93; the garnishment is still pending. So far, $9.566.15 has been collected, and a balance of $2.162.07 remains.

Class member, C.N., took out a $155 loan from CSI. A judgment was entered against him for $1.627.44. There is now a lien on C.N.'s property.

Class member, S.L., took out a $360 loan from CSI. A judgment was entered against her for $1.305.17; the garnishment is still pending. So far, $6.021.80 has been collected, and a balance of $2.182.90 remains.

Class member, F.H., took out a $100 loan from CSI. A judgment was entered against her for $380.82; the garnishment is still pending. So far, $3.935.54 has been collected, and a balance of $707.98 remains.

Class member, B.D., took out a $200 loan from CSI. A judgment was entered against her for $853.05; the garnishment is still pending. So far, $4.692.31 has been collected, and a balance of $1.531.57 remains.[35]

The Bureau believes that business practices of this nature, which might be referred to as enhanced collections practices, may raise substantial consumer protection concerns. Therefore, the Bureau requests information about methods creditors may use in connection with loans covered under the Concurrent Proposal or with non-covered loans to seize wages, funds, vehicles or other forms of personal property from borrowers that face liquidity crisis and obtain loans outside mainstream credit systems.

4. Are there practices in obtaining or using wage garnishment orders to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?

5. Are there practices in obtaining or using attachment or garnishment orders to seize funds from deposit accounts, prepaid cards, or other consumer assets to collect covered or non-covered loans that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?

6. Are there practices in obtaining or using judgment liens on vehicles or other consumer goods that raise consumer protection concerns? If so, what data, evidence, or other information tends to show these concerns exist or are likely to emerge in the future?

7. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to finalize a rule along the lines of the

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[33] Under the Concurrent Proposal a lender with a leveraged payment mechanism generally includes a lender that has the right to initiate a transfer of money from a consumer's transaction account to satisfy an obligation, to obtain payment directly from the consumer's employer or other source of income, or to require the consumer to repay the loan through a payroll deduction or deduction from another source of income.

[34] Subject to certain exceptions, the Title III of the Consumer Credit Protection Act protects employees by limiting the amount of earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938. 15 U.S.C. 1673(a). This limit applies regardless of how many garnishment orders an employer receives. The Federal minimum wage is $7.25 per hour effective July 24, 2009. *Wages and Hours Worked: Wage Garnishment,* Department of Labor, *https://www.dol.gov/compliance/guide/garnish.htm (last visited May 24, 2016).*

[35] *Hollins* v. *Capital Sols. Investments, Inc.*, 477 SW.3d at 27.

Bureau's Concurrent Proposal? If so, why?

8. Do particular Federal, State, or local laws affect consumer protection concerns associated with enhanced collection practices that would not be addressed by the Concurrent Proposal?

IV. Potential Consumer Harm From Loan Churning, Prepayment Penalties, and Slowly Amortizing Credit in Covered and Non-Covered High-Cost Credit

The Bureau's research into high-cost installment loans indicates that a substantial percentage of consumers refinance their loans during the term of their loans. Under the Concurrent Proposal, where consumers reborrow because their loan payments have proven to be unaffordable, a presumption would apply that a new loan with similar payment terms would likewise be unaffordable. However, that presumption would not apply in circumstances in which there is not an indication of financial distress or evidence that the refinancing was masking unaffordability of the outstanding loan.

The Bureau is concerned, however, that under certain circumstances lenders may have an incentive to encourage borrowers to refinance their loans in a way that creates extended patterns of payment that do not serve consumers' interests. These patterns of extended repayment may be caused or exacerbated by marketing or business practices that tend to frustrate the ability of borrowers to understand their loan terms. For example, some lenders may structure their loans such that a refinancing generates additional revenue for the lender, beyond the incremental finance charges, as a result of prepayment penalties, rebates calculated under the Rule of 78s, new origination fees, or new fees to purchase ancillary products associated with the refinancing. Moreover, because, in some high-cost loans, repayment of loan principal does not occur until the final few payments of the borrower's payment schedule, refinancing can deprive borrowers of the opportunity to make substantial progress in escaping their debts. The Bureau seeks to better understand the use of incentives and sales practices that might encourage borrowers to refinance high-cost loans, including practices that encourage refinancing after the consumer has made multiple payments allocated to interest and fees, but before making substantial progress reducing the loan principal.

The Bureau also requests information about the nature of consumer protection concerns associated with the imposition of prepayment penalties in longer-duration, high-cost covered loans and also whether comparable concerns exist in non-covered loan products. In the Concurrent Proposal, the Bureau has noted that penalizing consumers for prepaying loans with durations of less than 24 months is likely to be inconsistent with consumers' expectations for their loans and may prevent consumers from repaying debts that they otherwise would be able to retire. Accordingly the proposal would prohibit lenders from imposing a prepayment penalty in connection with certain covered longer duration loans that are made under a conditional exemption from the proposed ability-to-repay requirements. While the Bureau believes there is a basis for proposing to prohibit prepayment penalties from conditionally exempt covered loans, the Bureau requests further information about whether consumer protection concerns may exist more generally with respect to prepayment penalties incorporated into longer duration covered and non-covered loans marketed to consumers facing liquidity crises. In particular, the Bureau seeks to explore whether there may be informal methods of imposing prepayment penalties, such as denial of a promised rebate, which could make it more costly for borrowers in either covered or non-covered longer duration high-cost loans to repay those loans. The Bureau also seeks to obtain more information about the prevalence of prepayment penalties and potential consumer protection concerns associated with non-covered, longer duration, high-cost loans.

The Bureau is also concerned that, for borrowers facing cash shortfalls that lack access to the mainstream credit system, loans could be structured in such a way that even if borrowers have the ability to make their payments, doing so could cause borrowers to suffer undue, long-term hardships. These hardships could be caused or exacerbated by marketing, business practices, or contract terms that tend to frustrate the ability of borrowers to understand their payment obligations or otherwise interfere with their ability to protect their interests. For example, a lender might aggressively market a payment-option, adjustable-rate installment loan that allows borrowers to temporarily make negatively amortizing payments until a later recast date. After the recast date, borrowers facing larger, adjusted installment payment obligations could be vulnerable to payment shock because their income may be insufficient to cover the adjusted payment along with their other obligations and basic living expenses at that time.

Similarly, a lender might offer a fully amortizing loan with a sufficiently long term and high interest rate and apply most payments to interest for a large portion of the loan's life. Consider, for example, a $500 consumer loan with a 450 percent APR and a two-year duration payable in equal monthly installments. This borrower would face 24 monthly payments of about $188 each. After the first three months, a successfully repaying borrower would have repaid more than the initial amount financed, but reduced that balance by less than 50 cents. After 18 of 24 payments, the successfully repaying borrower would still owe over $400 of the $500 originally borrowed. Under the Bureau's Concurrent Proposal, if the loan included a leveraged payment mechanism or vehicle security interest, the lender would be required to reach a reasonable determination of the borrower's ability to repay each $188 monthly payment. On the other hand, a lender making this loan without a leveraged payment mechanism or vehicle security interest would not be subject to the proposed ability-to-repay requirement. In either case, the Bureau requests information about whether loans along the lines of these or similar examples currently exist or could be anticipated to evolve if the Bureau finalizes the Concurrent Proposal.

With respect to these potential concerns:

9. Are there marketing or other business practices with respect to lender incentives or encouragement of loan refinancing that raise consumer protection concerns?

a. If so, what specific business practices or contractual terms are associated with consumer harm?

b. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm associated with these practices?

10. Are there circumstances in which the imposition of prepayment penalties raises consumer protection concerns in non-covered loans marketed to consumers facing a liquidity crisis?

a. If so, what specific contractual terms or business activities are associated with consumer harm?

b. What evidence, data, or other information tends to show the current or likely future prevalence of consumer harm associated with prepayment penalties in non-covered loans?

11. Are there methods of imposing informal penalties for prepayment, such as withholding a promised rebate, which raise consumer protection

concerns in either covered or non-covered loans marketed to consumers facing liquidity crisis?

a. If so, specifically what contractual terms or business activities are associated with consumer harm?

b. What evidence, data, or other information tends to show the current or likely future prevalence of consumer harm associated with such informal penalties for prepayment.

12. Are there circumstances in which excessively slow amortization of high-cost installment loans or open-end lines of credit raise consumer protection concerns?

a. If so, what specific contractual terms or business activities are associated with consumer harm?

b. To what extent are consumers aware of the costs and risks of such loans? Are there other factors that might frustrate the ability of consumers to protect their interests in using such loans?

c. Is there consumer harm from loan payment schedules where the bulk of repayment allocated to principal occurs in the final few payments of an even-payment loan? What specific criteria should the Bureau consider in identifying such consumer harm, if any?

d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with payment schedules of this type?

e. What evidence exists that consumers who make an even-payment understand that the lower principal is not being evenly paid down?

13. With respect to each of these questions, what is the prevalence of these practices in the current market? And, can the Bureau reasonably anticipate that these practices would increase or decrease if the Bureau were to issue a final rule along the lines of the Bureau's notice of proposed rulemaking? If so, why?

V. Potential Consumer Harm From Default Interest Rates, Late Payment Penalties, Teaser Rate Loans, or Other Back-End Pricing Practices

In the Bureau's experience, post-delinquency or default revenue terms such as late fees, default interest rates, or other contractual remedies can lead to consumer protection concerns. For example, in 2009 Congress adopted the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act) to curb excessive or unfair late fees by generally requiring card issuers to refrain from imposing a late fee unless the creditor has adopted reasonable policies and procedures to ensure that consumers are given at least 21 days to pay their bill and by limiting late fees to an amount that is "reasonable and proportional" to the violation of the account terms in question.[36]

Unlike credit card markets, there are currently no broadly applicable Federal rules comparable to the CARD Act's late payment provisions for consumers of high-cost payday, vehicle title, installment loans, or open-end lines of credit. The Bureau seeks information about whether post-delinquency or default revenue terms such as late fees, default interest rates, or other back-end pricing practices may create a mismatch between borrowers' expectations and their actual experiences with their loans over time. For example, some consumers may have the ability to repay at origination but changes in their circumstances such as illness, loss of employment, family disruptions such as divorce or separation, or unexpected expenses could nevertheless lead to delinquency or default. Similarly, some consumers may fall into arrears due to inattention to detail, miscommunication, payment system delay, or clerical error. The Bureau seeks to learn whether revenue generation provisions imposed on consumers in these and similar situations may raise consumer protection concerns.[37] The Bureau is not, however, soliciting information in this RFI on the examples of such practices that would constitute evasions of the Concurrent Proposal, as described in proposed § 1041.19 and its commentary.

The Bureau is also aware that teaser rate products can, under some circumstances, give rise to consumer protection concerns. With a teaser rate, the initial interest rate and payment may remain in effect for a limited period of time. For some such loans, the initial rate and payment can vary considerably from the rate and payment obligations later on. Teaser rate loans can lead to unexpected "payment shock" when borrowers face payments associated with a recast interest rate that increases borrower payments.[38] The Bureau seeks to learn whether covered or non-covered high-cost loans made to consumers facing liquidity crisis are being offered with teaser rate features. If so, the Bureau would like to obtain information about whether the use of teaser rate loan terms in this market may create risks to consumers.

With respect to these issues:

14. Other than circumstances identified in the Concurrent Proposal, as discussed above, under what circumstances do lenders' use of post-delinquency or default revenue terms such as late fees, default interest rates, or other contractual provisions or remedies in either covered or non-covered loans marketed to consumers facing liquidity crisis raise consumer protection concerns?

a. To what extent do lenders making covered loans or non-covered, high-cost loans to consumers facing cash shortfalls consider post-delinquency or default revenue generating terms such as late fees, default interest rates, or other contractual provisions or remedies when they perform underwriting? If they do so, how do they do it?

b. If lenders' current underwriting practices do not include consideration of the borrower's ability to repay post-delinquency or default revenue generating terms, what would be a reasonable method of underwriting for this factor?

c. What evidence, data, or other information shows the current or likely future prevalence of consumer harm, if any, associated with post-delinquency or default revenue terms in covered or non-covered high-cost consumer loans?

15. Are there circumstances in which the use of teaser rates which reset to high-cost loans made to consumers facing liquidity crisis raise consumer protection concerns?

a. If so, what specific contractual terms or business activities are associated with consumer harm?

b. Do teaser rate products, to the extent any exist, create a mismatch between borrowers' repayment expectations and their actual experiences in either covered or non-covered loans?

c. If lenders offer teaser rate products in loans to consumers facing liquidity needs, do they consider recast interest rates in underwriting? If they do so, how do they do it?

d. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with adjustable interest rates products in covered or non-covered high-cost loans?

16. Are there other circumstances in which "back-end" pricing impedes the

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[36] 15 U.S.C. 1665d, 1666b. To assist credit card issuers in complying with their CARD Act obligations Regulation Z establishes a safe harbor benchmark for reasonable and proportional penalty fees. 12 CFR 1026.52(b)(1)(ii).

[37] For example, Mountain Loan Centers' seven-month, 432 percent APR "signature" loans of $800 include a default interest rate of 600 percent imposed when any installment payment is more than three days past due. Complaint, *Mountain Loan Centers, Inc.* v. *Audra Crizer,* No. 159401338.

[38] Federal Reserve Board of Governors, *Consumer Handbook on Adjustable-Rate Mortgages, available at http://files.consumerfinance.gov/f/201204_CFPB_ARMs-brochure.pdf.*

ability of consumers to afford or to understand and compare credit options marketed to consumers facing liquidity crisis in a way that raises consumer protection concerns or impedes their ability to understand or anticipate the full cost of the loan to that consumer?

a. If so, what specific back-end pricing fees, contractual terms, or other business activities exist in the marketplace or are likely to evolve in the future?

b. If so, what back-end pricing fees, contractual terms, or other business activities are associated with consumer harm?

c. What data, evidence, or other information tends to show the current or likely future prevalence of consumer harm, if any, associated with such back-end pricing in covered or non-covered high-cost loans?

VI. Potential Consumer Harm from Ancillary Products

In the Bureau's experience, the marketing of ancillary products, sometimes called "add-ons," can lead to consumer protection concerns.[39] For instance, the Bureau is concerned that some creditors may engage in sales and marketing practices that raise consumer protection concerns with respect to the sale of credit insurance, debt suspension or debt cancellation agreements, and other credit related ancillary products. For example, in the past four years the Bureau has announced numerous different public enforcement actions associated with illegal marketing of add-ons that led to approximately $2.4 billion in consumer redress, refunds, and forgiven debts. In these ancillary product matters, the Bureau, in some instances working in cooperation with other Federal or State regulators, imposed over $128 million in civil money penalties. Among other practices and concerns, the Bureau has found or alleged that some companies offering ancillary products failed to accurately describe those products, offered products that provided little or no benefit to consumers without disclosing this fact, stated or implied that ancillary products were required as a condition of borrowing when they were not, and billed consumers for add-on products without permission.[40] For both covered and non-covered loans, the Bureau seeks to learn more about the marketing of ancillary products to consumers facing liquidity crisis and borrowing outside the mainstream credit system.

Moreover, ancillary products can affect the affordability of consumer credit. The Bureau's Concurrent Proposal includes the cost of credit insurance, debt suspension agreements, and credit-related ancillary products sold in originating a loan in calculating the total cost of credit for purposes of determining whether a longer duration loan is covered by the proposed rule. The Bureau's Concurrent Proposal also would require that creditors consider the cost of these products in determining borrowers' ability to repay. Nevertheless, the Bureau seeks to obtain more information about the prevalence and affordability of add-on products in non-covered loans made to consumers facing liquidity crisis.

With respect to these potential issues:

17. Aside from affordability, are there consumer protection concerns arising out of the marketing of ancillary products in covered payday, vehicle title, or similar loans? If so, what evidence, data, or other information shows the current or likely future prevalence of these concerns?

18. To what extent do lenders making non-covered, high-cost loans consider the cost of ancillary products in determining whether borrowers have the ability to repay?

a. If they do so, how do they do it?

b. If lenders do not currently consider the affordability of such products, what would be a reasonable method of underwriting for this component of the loan?

c. What evidence, data, or other information shows the current or likely future prevalence of unaffordable ancillary products in non-covered loans?

19. Are there other consumer protection concerns associated with the marketing or use of ancillary products in combination with covered or non-covered, high-cost credit? If so, what evidence, data, or other information shows the current or likely future prevalence of such consumer protection concerns?

VII. Potential Market Evolution and Other Topics Not Identified

The market for high-cost consumer credit is currently in transition due to regulatory and technological change. Many lenders are developing new technological channels for delivering consumer financial products to the market place. State, local and tribal laws are continually evolving in response to these forces. The Bureau seeks to apprise itself of current and expected changes in the marketplace for high-cost loans that could present consumer protection concerns. Moreover, the Bureau is mindful that, in the past, markets supplying credit to borrowers facing cash shortfalls have evolved in response to regulatory action, thereby causing the government considerable difficulty in addressing some consumer protection issues.

Bearing in mind the potential for future evolution in this market and in lender practices:

20. Are there other marketing, origination, underwriting, or collection practices that currently exist or, if the Bureau issues a final rule along the lines of the Concurrent Proposal, are likely to emerge, that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?

21. Are there arrangements with brokers, credit service organizations, or other intermediaries in the marketing, origination, underwriting, collection or information-sharing practices associated with non-covered high-cost credit markets that pose risk to consumers and may warrant Bureau regulatory, supervisory, enforcement, or consumer educational action?

22. If so, what specific actions or policies should the Bureau consider in addressing such consumer harm? Other than usury limits applicable to an extension of credit, which Congress has not authorized the Bureau to establish, are there examples of existing law, regulations, or other policy interventions that the Bureau should consider?

Dated: June, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–13492 Filed 7–21–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

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[39] Examples of ancillary products include credit insurance, debt suspension or debt cancellation agreements, and identity theft protection plans.

[40] *See, e.g.,* Citibank, N.A., CFPB No. 2015–CFPB–0015 (July 21, 2015), *available at http://files.consumerfinance.gov/f/201507_cfpb_consent-order-citibank-na-department-stores-national-bank-and-citicorp-credit-services-inc-usa.pdf;* Am. Express Centurion Bank, CFPB No. 2012–CFPB–0002 (Oct. 1, 2012), *available at http://files.consumerfinance.gov/f/2012–CFPB–0002-American-Express-Centurion-Consent-Order.pdf;* Discover Bank, CFPB No. 2012–CFPB–0005 (Sept. 24, 2012), *available at http://files.consumerfinance.gov/f/201209_cfpb_consent_order_0005.pdf.*

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board will take place.

DATES:

Tuesday, August 9, 2016

9:00 a.m.–11:30 a.m. (Open Session)
11:30 a.m.–12:30 p.m. (Administrative Session)
12:30 p.m.–5:00 p.m. (Open Session)

ADDRESSES: The St. Anthony, San Antonio—Peraux Room, 300 East Travis Street, San Antonio, TX 78205 (Pre-meeting registration required; see guidance in **SUPPLEMENTARY INFORMATION**, "Public's Accessibility to the Meeting").

FOR FURTHER INFORMATION CONTACT: The Executive Director of the Defense Health Board is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, (703) 681–6653, Fax: (703) 681–9539, *christine.e.bader.civ@mail.mil.* For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *kendal.l.brown2.ctr@mail.mil,* (703) 681–6670, Fax: (703) 681–9539.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. Additional information, including the agenda and electronic registration, is available at the DHB Web site, *http://www.health.mil/About-MHS/Other-MHS-Organizations/Defense-Health-Board/Meetings.*

Purpose of the Meeting

The purpose of the meeting is to provide progress updates on specific taskings before the DHB. In addition, the DHB will receive information briefings on current issues or lessons learned related to military medicine, health policy, health research, disease/injury prevention, health promotion, and health care delivery.

Agenda

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the DHB meeting is open to the public from 9:00 a.m. to 11:30 a.m. and 12:30 p.m. to 5:00 p.m. on August 9, 2016. The DHB anticipates receiving progress updates from the Health Care Delivery Subcommittee on the pediatric clinical preventive services tasking, Public Health Subcommittee on its review of improving Defense Health Program medical research processes, and a subset of the Board on the Deployment Health Centers review. In addition, the DHB anticipates receiving information briefings on the Military Health System Population Health Portal; the Army Medical Home; a review of recommendations from the 2014 DHB report *Combat Trauma Lessons Learned from Military Operations of 2001–2013;* an update on progress in the evolution of the Joint Trauma System; a review of the recent National Academies of Sciences, Engineering, and Medicine report on *A National Trauma Care System: Integrating Military and Civilian Trauma Systems to Achieve Zero Preventable Deaths After Injury;* and advances in genitourinary reconstruction following combat trauma. Any changes to the agenda can be found at the link provided in this **SUPPLEMENTARY INFORMATION** section.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Monday, August 1, 2016 to register. Additional details will be provided to all registrants.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the DHB may do so in accordance with section 10(a)(3) of the Federal Advisory Committee Act, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice.

Individuals desiring to provide comments to the DHB may do so by submitting a written statement to the DHB Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**). Written statements should not be longer than two type-written pages and address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting.

The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The DFO, in consultation with the DHB President, may allot time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: July 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17349 Filed 7–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2015–OS–0048]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 22, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: "Department of Defense Security Agreement," "Appendage to Department of Defense Security Agreement," "Certificate Pertaining to Foreign Interests;" DD Forms 441, 441–1 and SF 328; OMB Control Number 0704–0194.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 6,851.

Responses per Respondent: 1.

Annual Responses: 6,851.

Average Burden per Response: 1.5 hours.

Annual Burden Hours: 4171.3 hours.

Needs And Uses: Executive Order (EO) 12829 as amended, "National Industrial Security Program (NISP)," stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in Department of Defense (DoD) 5220.22M, "National Industrial Security Program Operating Manual (NISPOM)," dated February 28, 2006 as amended by Conforming Change 1, dated March 28, 2013. These forms are mandated in the Industrial Security Regulation DoD 5220.22–R dated December 1985 as amended, DoD 5220.22—NISP Volume 3, dated April 17, 2014 and the Federal Acquisition Regulation. Respondents must execute DD Form 441, "Department of Defense Security Agreement," which is the initial agreement between the contractor and the government regarding security requirements necessary to protect classified information associated with the contract. This legally binding document details the responsibility of both parties and obligates the contractor to fulfill the requirements outlined in DoD 5220.22M. The DD Form 441–1, "Appendage to Department of Defense Security Agreement," is used to extend the agreement to branch offices of the contractor. The SF Form 328, "Certificate Pertaining to Foreign Interests," must be submitted to provide certification regarding elements of Foreign Ownership, Control, or Influence (FOCI) as stipulated in paragraph 2–302 of the NISPOM. DSS proposes to make changes to the DD Form 441 and SF 328. The requirement for execution of the corporate "Certificate" section and the use of a corporate seal is being deleted. Currently the government does not require all corporations to execute the corporate Certificate portion of the Forms. Only those corporations who are in possession of a seal were being required to execute the Certificate. Corporations that do not have a seal and other types of business structures such as limited liability companies, partnership and sole proprietors are only required to have the signing of the agreement witnessed. DSS proposes that a witness is sufficient for all companies whether or not they are a corporation.

Affected Public: Business or other for-profit; individuals or households; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: July 19, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17353 Filed 7–21–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant an Exclusive License; SpringStar Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant SpringStar Inc. a revocable, nonassignable, exclusive license to practice worldwide the Government owned inventions described in U.S. Patent Application 14/693,615 filed April 22, 2015 and entitled "Insect control formulation with improved auto-dissemination characteristics," as well as any issued patent, divisional or continuation from that and related foreign filings in the field of insect control.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any, not later than August 8, 2016.

ADDRESSES: Written objections are to be filed with Attn: Naval Medical Research Center, Code 1URO/OPBD, 503 Robert Grant Avenue, Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. T.A. Ponzio, Director, Partnerships & Business Development, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500; *todd.a.ponzio.civ@mail.mil;* telephone: 240–762–0673.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 13, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–17027 Filed 7–21–16; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0656; FRL–9947–44–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Lead-Acid Battery Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Lead-Acid Battery Manufacturing (40 CFR part 60, subpart KK) (Renewal)" (EPA ICR No. 1072.11, OMB Control No. 2060–0081), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the

ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0656, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NSPS (40 CFR part 60, subpart A), and any changes, or additions to the Provisions are specified at 40 CFR part 60, subpart KK. Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Lead-acid battery manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart KK).

Estimated number of respondents: 52 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 3,990 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $423,000 (per year), which includes $11,700 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in respondent labor hours in this ICR from the most recently approved ICR. This decrease is due to rounding differences and a mathematical correction in the burden calculations.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17288 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2015–0190; FRL—9947–37–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Nitric Acid Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Nitric Acid Plants (40 CFR part 60, subparts G and Ga) (Renewal)" (EPA ICR No. 1056.12, OMB Control No. 2060–0019), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2015–0190, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the specific requirements (40 CFR part 60, subparts G and Ga). This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Nitric acid plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts G and Ga).

Estimated number of respondents: 29 (total).

Frequency of response: Initially, occasionally and semiannually.

Total estimated burden: 2,190 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,970,000 (per year), which includes $2,740,000 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred due to industry growth in the past three years, resulting in an additional number of respondents that have become subject to Subpart Ga. Additionally, this ICR assumes that all respondents will have to familiarize themselves with regulatory requirements each year. These changes result in an increase in the number of responses, labor hours and costs, and total O&M costs.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17287 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0207; FRL 9948–46–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Cellulosic Production Volume Projections and Efficient Producer Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "Cellulosic Production Volume Projections and Efficient Producer Reporting" (EPA ICR No. 2551.01, OMB Control No. 2060–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** (80 FR 15597) on March 24, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2015–0207, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* Attention Air and Radiation Docket ID No. EPA–HQ–OAR–2015–0207, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jon Monger, Policy Advisor, Office of Transportation and Air Quality, Mail Code: 6401A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–0628; fax number: 202–564–1177; email address: *monger.jon@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA is seeking to collect information from potential cellulosic biofuel producers to aid in determining the annual volume standards. This ICR includes a questionnaire form to facilitate the collection of this information. EPA would also like to use a data form to collect information from certain producers and importers who have requested and been approved to use an "efficient producer" pathway. This data form would standardize collection of selected data points and allow better and more efficient compliance with the RFS program. We inform respondents that they may assert claims of business confidentiality (CBI) for information they submit in accordance with 40 CFR 2.203.

Form Numbers: RFS Efficient Producer Data Form (RFS2500), RFS Cellulosic Biofuel Producer Questionnaire Form (RFS2700).

Respondents/affected entities: Producers, Importers of Renewable Fuels.

Respondent's obligation to respond: RFS Cellulosic Biofuel Producer Questionnaire Form is voluntary; RFS Efficient Producer Data Form is mandatory pursuant to Sections 114 and 208 of the Clean Air Act (CAA), 42 U.S.C. 7414 and 7542 for producers eligible to generate RINs through an efficient producer pathway pursuant to 40 CFR 80.1416.

Estimated number of respondents: 90 (total).

Frequency of response: Annually (RFS Cellulosic Biofuel Producer Questionnaire Form) or quarterly (RFS Efficient Producer Data Form).

Total estimated burden: 880 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $101,920 (per year), includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no previous ICR for this collection.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17285 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9028–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly Receipt of Environmental Impact Statements (EISs)
Filed 07/11/2016 Through 07/15/2016, Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160164, Draft Supplemental, NRC, WY, Reno Creek In Situ Recovery Project, Supplement to the Generic Environmental Impact Statement for the In Situ Leach Uranium Facilities, Comment Period Ends: 09/06/2016, Contact: Jill Caverly 301–415–7674.

EIS No. 20160165, Final, USFWS, HI, Na Pua Makani Wind Project and Habitat Conservation Plan, Review Period Ends: 08/22/2016, Contact: Ms Jodi Charrier 808–792–9400.

EIS No. 20160166, Final, USFS, OR, Lower Joseph Creek Restoration Project, Review Period Ends: 08/23/2016, Contact: Anne Thomas 541–278–3860.

EIS No. 20160167, Draft Supplement, USACE, CA, Folsom Dam Raise Project, Comment Period Ends: 09/06/2016, Contact: Mariah Brumbaugh 916–557–6774.

EIS No. 20160168, Draft, NSA, MD, East Campus Integration Program, Comment Period Ends: 09/05/2016, Contact: Jeffrey Williams 301–688–2970.

EIS No. 20160169, Draft, BOEM, AK, Cook Inlet Planning Area Oil and Gas Lease Sale 244 Comment Period Ends: 09/06/2016, Contact: Caron McKee, 907–334–5200.

EIS No. 20160170, Final, BIA, IN, The Pokagon Band of Potawatomi Indians Fee-to-Trust Transfer for Tribal Village and Casino, Review Period Ends: 08/22/2016, Contact: Scott Doig 612–725–4514.

EIS No. 20160171, Final, BLM, UT, Moab Master Leasing Plan and Proposed Resource Management Plan Amendments, Review Period Ends: 08/22/2016, Contact: Brent Northrup 435–259–2151.

Amended Notices

EIS No. 20160132, Draft, FHWA, CO, US 50 Corridor East, Comment Period Ends: 08/12/2016, Contact: Patricia Sergeson 720–963–3073.

Revision to FR Notice Published 06/10/2016; Extending Comment Period from 07/29/2016 to 08/12/2016.

Dated: July 19, 2016.

Karin Leff,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–17382 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0678; FRL–9948–06–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Mineral Wool Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Mineral Wool Production (40 CFR part 63, subpart DDD) (Renewal)" (EPA ICR No. 1799.09, OMB Control No. 2060–0362), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0678, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 63, subpart A), and any changes, or additions to the Provisions that are specified (40 CFR part 63, subpart DDD). Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Mineral wool production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart DDD).

Estimated number of respondents: 8 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 2,130 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $285,000 (per year), which includes $6,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in burden due to an update to the estimated respondent universe. During development of the 2015 amendment, EPA estimates that 8 mineral wool production facilities are currently subject to the standard. There is also an increase in the respondent labor costs due to additional compliance testing requirements from the 2015 amendment.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17284 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9947–94]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before August 22, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0022 and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

EPA Registration Number: 100–1533. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed use:* Basil; Brassica head and stem vegetable group 5–16; Leafy greens subgroup 4–16A. *Contact:* RD.

EPA Registration Number: 100–1571. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed use:* Caneberry subgroup 13–07A; Leafy greens subgroup 4–16A; Stalk and stem vegetable subgroup 22A. *Contact:* RD.

EPA Registration Number: 100–1572. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* Syngenta Crop Protection LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed use:* Leafy greens subgroup 4–16A; Basil, Brassica head and stem vegetable group 5–16; Brassica leafy greens subgroup 4–16B. *Contact:* RD.

EPA Registration Numbers: 264–693 and 264–695. *Docket ID number:* EPA–HQ–OPP–2016–0064. *Applicant:* Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Fenamidone. *Product type:* Fungicide. *Proposed use:* Basil; Brassica, head and stem, group 5–16; Brassica, leafy greens, subgroup 4–16B; Cotton subgroup 20C; Leafy greens subgroup 4–16A; Leaf petiole vegetable subgroup 22B. *Contact:* RD.

EPA Registration Numbers: 264–1105 & 264–1106. *Docket ID number:* EPA–HQ–OPP–2016–0166. *Applicant:* Bayer CropScience, 2 T.W. Alexander, P.O. Box 12014, Research Triangle Park, NC 27709. *Active ingredient:* Indaziflam. *Product type:* Herbicide end-use product. *Proposed uses:* For control of weeds in crops within the following crop groups/subgroups: Bushberry subgroup 13–07B; Caneberry subgroup 13–07A; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F; Fruit, stone, group 12–12; Nut, tree, group 14–12; Tropical and Subtropical, small fruit, edible peel subgroup 23A; and the individual crops of coffee and hops. *Contact:* RD.

EPA Registration Number: 264–1129. *Docket ID number:* EPA–HQ–OPP–2016–0166. *Applicant:* Bayer CropScience, 2 T.W. Alexander, P.O. Box 12014, Research Triangle Park, NC 27709. *Active ingredient:* Indaziflam. *Product type:* Herbicide technical use product. *Proposed use:* For formulation into end-use indaziflam products that are used to control weeds in crops within the following crop groups/subgroups: Bushberry subgroup 13–07B; Caneberry subgroup 13–07A; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F; Fruit, stone, group 12–12; Nut, tree, group 14–12; Tropical and Subtropical, small fruit, edible peel subgroup 23A; as well as the individual crops of coffee and hops. *Contact:* RD.

EPA Registration Number: 352–728 & 352–844. *Docket ID number:* EPA–HQ–OPP–2013–0235. *Applicant:* E.I. du Pont de Nemours & Company., Dupont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0300. *Active ingredient:* Chlorantraniliprole. *Product type:* insecticide. *Proposed Use:* Teff and quinoa. *Contact:* RD.

EPA Registration Number: 352–890. *Docket ID number:* EPA–HQ–OPP–2016–0049. *Applicant:* E.I. du Pont de Nemours and Company, Inc., Dupont Crop Protection, Stine-Haskell Research Center, P.O. Box 30, Newark, DE 19714–0300. *Active ingredient:* Oxathiapiprolin. *Product type:* Fungicide. *Proposed use:* Basil; Brassica head and stem vegetable group 5–16; Brassica leafy greens subgroup 4–16B; Leafy greens subgroup 4–16A; Caneberry subgroup 13–07A; Stalk and stem vegetable subgroup 22A. *Contact:* RD.

EPA Registration Number: 61842–21. *Docket ID number:* EPA–HQ–OPP–2016–0326. *Applicant:* Tessenderlo Kerley, Inc., 2255 N. 44th Street, Suite 300, Phoenix, AZ 85008. *Active ingredient:* Linuron. *Product type:* Herbicide. *Proposed use:* Expansion of potato use to remove regional restrictions. *Contact:* RD.

EPA Registration Numbers: 62719–21 and 62719–684. *Docket ID number:* EPA–HQ–OPP–2016–0295. *Applicant:* Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Nitrapyrin. *Product type:* Herbicide. *Proposed use:* Nut, tree, group 14–12 and almond, hulls. *Contact:* RD.

EPA Registration Numbers: 67690–73, 67690–74, 67690–75. *Docket ID number:* EPA–HQ–OPP–2016–0325. Applicant: SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032. *Active ingredient:* Fluridone. *Product type:* Herbicide. *Proposed use:* cotton, gin byproducts. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 29, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–17407 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0499; FRL–9947–52–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Industrial/Commercial/Institutional Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Industrial/Commercial/Institutional Steam Generating Units (40 CFR part 60, subpart Db) (Renewal)" (EPA ICR No. 1088.14, OMB Control No. 2060–0072), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously-requested via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0499, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NSPS (40 CFR part 60, subpart A) and any changes, or additions to the Provisions are specified at 40 CFR part 60, subpart Db. Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required semiannually.

Form Numbers: None.

Respondents/affected entities: Industrial, commercial, and institutional steam generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Db).

Estimated number of respondents: 1,846 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 1,690,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $210,000,000 (per year), which includes $35,100,000 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the overall burden in this ICR from the most-recently approved ICR. This is due to a projection of industry growth, resulting in additional sources becoming subject to the regulation. The growth projection is based on the Agency's November 2011 industry analysis. This results in an increase in the respondent labor hours, labor costs, capital and O&M costs, and number of responses.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17289 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0669; FRL–9947–85–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Oil and Natural Gas Production (40 CFR part 63, subpart HH) (Renewal)" (EPA ICR No. 1788.11, OMB Control No. 2060–0417), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 *FR* 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0669, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the specific requirements at 40 CFR part 63, subpart HH. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Oil and natural gas production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HH).

Estimated number of respondents: 4,242 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 52,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,420,000 (per year), which includes $1,010,000 for both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the estimated burden. This is not due to program changes. The increase occurred because there is a projected industry growth, where an additional 28 major sources and 141 area sources are expected to become subject to the rule each year. This results in an estimated increase in the respondent labor hours, O&M costs, and number of responses.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17282 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0665; FRL–9947–65–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Magnetic Tape Manufacturing Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, subpart EE) (Renewal)" (EPA ICR No. 1678.09, OMB Control No. 2060–0326), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently-approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0665, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.*

Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the specific requirements at 40 CFR part 63 Subpart EE. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Magnetic tape manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EE).

Estimated number of respondents: 6 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 3,910 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $451,000 (per year), which includes $47,000 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent burden as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred because of a change in assumption. This ICR assumes all sources will have to familiarize themselves with the regulatory requirements each year. In addition, this ICR has an increase of one response to account for the initial performance test notification.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17281 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0660; FRL–9947–54–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (40 CFR part 63, subpart T) (Renewal)" (EPA ICR No. 1652.09, OMB Control No. 2060–0273), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were requested previously via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0660, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP (40 CFR part 63, subpart A), and any changes, or additions. to the Provisions are specified at 40 CFR part 63, subpart T. Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Facilities with halogenated HAP solvent cleaning machines.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart T).

Estimated number of respondents: 1,431 (total).

Frequency of response: Initially, quarterly, semiannually and annually.

Total estimated burden: 48,000 hours (rounded) (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,960,000 (per year), which includes $1,010,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in respondent labor hours in this ICR from the most recently approved ICR. This is due to assuming all existing sources will have to re-familiarize with the regulatory requirements each year. Additionally, there is a small decrease in the total capital and O&M cost due to the rounding of all calculated values to three significant digits.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17291 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0654; FRL—9946–89–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Automobile and Light Duty Truck Surface Coating Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR part 60, subpart MM) (Renewal)" (EPA ICR No. 1064.18, OMB Control No. 2060–0034), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0654, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions are specified at 40 CFR part 60, subpart MM. Owners or operators of the affected facilities must submit initial notification reports, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Facilities that perform surface coating of automobile and light duty truck.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MM).

Estimated number of respondents: 66 (total).

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 192,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $19,900,000 (per year), which includes $114,000 in both annualized capital/startup and operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the respondent and Agency burden in this ICR compared to the most recently approved ICR. This increase is due to an estimated increase in the number of sources, which results in an increase in labor hours, number of responses, and total O&M costs.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17290 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9947–93]

Pesticide Product Registration; Receipt of Application for New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application to register pesticide a product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

DATES: Comments must be received on or before August 22, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0022 and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Steve Knizner, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *ADFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received an application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on this application. Notice of receipt of this application does not imply a decision by the Agency on these applications.

EPA File Symbols: 91413–R and 91413–E. *Docket ID number:* EPA–HQ–OPP–2016–0220. *Applicant:* Poly Group LLC, 451 Baxter Avenue, Louisville, KY 40204. *Product name:* Nouvex N950–9010. *Active ingredient:* Nouvex Antimicrobial Polymer—Pyridine, 4-Ethenyl-, Polymer with a-(2-Methyl-1-Oxo-2-Propen-1-yl)-ω-Methoxypoly(oxy-1,2-Ethanediyl), Compound with 1-Bromohexane (Nouvex N950–9010) at 97.2%. *Proposed use:* Material preservative used to control microorganisms that cause deterioration and discoloration for use in paper, plastic and textiles. *Contact:* AD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 29, 2016.

Steve Knizner,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2016–17409 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0676; FRL—9947–97–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (40 CFR part 63, subparts AA and BB) (Renewal)" (EPA ICR No. 1790.08, OMB Control No. 2060–0361), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2016. Public comments were requested previously via the **Federal Register** (80 FR 32116) on June 5, 2015, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 22, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0676, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record-keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the specific requirements at 40 CFR part 63 subparts AA and BB. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/affected entities: Phosphoric acid manufacturing and phosphate fertilizer production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts AA and BB).

Estimated number of respondents: 13 (total).

Frequency of response: Initially, occasionally, quarterly, semiannually and annually.

Total estimated burden: 2,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $413,000 (per year), which includes $186,000 in either annualized capital/startup or operation & maintenance costs.

Changes in the Estimates: There is an adjustment increase in the total estimated cost, burden, number of responses, and capital and O&M costs as currently identified in the OMB Inventory of Approved Burdens. The change in burden for the new and existing facilities is due primarily to a program change in the regulation requiring: (1) Mercury testing and total fluoride (TF) testing of phosphate rock calciners; and (2) TF testing of oxidation reactors. The Residual Risk and Technology Review (RTR) associated with this program change estimated 12 phosphoric acid units and 11 phosphate fertilizer units (a total of 23 process units) located at 13 facilities.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–17283 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice for comment regarding the Federal Reserve proposal to extend with revision, the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to revise the FR H–(b)11, an information collection submitted by Savings and Loan Holding Companies (SLHCs).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before September 20, 2016.

ADDRESSES: You may submit comments, identified by *FR H–(b)11* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Savings Association Holding Company Report.

Agency form number: FR H–(b)11.

OMB control number: 7100–0334.

Frequency: Quarterly.

Respondents: Savings and Loan Holding Companies.

Estimated number of respondents: 15.

Estimated Average Hours per Response: 2 hours.

Estimated Annual Burden Hours: 120 hours.

General Description of Report: The FR H–(b)11 collects information on filings with the Securities and Exchange Commission (SEC), reports provided by the nationally recognized statistical rating organizations and securities analysts, supplemental information for select questions from the *Quarterly Savings and Loan Holding Company Report* (FR 2320; OMB No. 7100–0345), financial statements, and other materially important events and exhibits. Respondents are (1) grandfathered unitary SLHCs whose assets are primarily commercial and whose thrifts make up less than 5 percent of its consolidated assets and (2) SLHCs whose assets are primarily insurance-related and do not otherwise submit financial reports with the SEC pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. The Federal Reserve uses the FR H–(b)11 data to analyze the overall financial condition of SLHCs to ensure safe and sound operations.

Legal Authorization and Confidentiality: The Board's Legal Division has determined that the FR H–(b)11 is authorized by Section 10 of the Home Owners' Loan Act, which requires SLHCs to file "such reports as may be required by the Board" and provides that such reports "shall contain such information concerning the operations of such SLHC and its subsidiaries as the Board may require" (12 U.S.C. 1467a(b)(2)(A)).

The obligation to respond to the FR H–(b)11 is mandatory. The FR H–(b)11 covers 6 different items. Item 1 consists of SEC filings made by the SLHC that are not publicly traded companies and item 2 consists of reports provided by nationally recognized statistical rating organizations and securities analysts on any company in the SLHC's consolidated organization. The Board's Legal Division has determined that neither of these items should raise any issue of confidentiality.

Item 3 consists of supplemental information for any questions on the FR 2320 to which the SLHC answered "yes." The Board's Legal Division has determined that supplemental information in response to a "yes" answer for the FR 2320's questions 24, 25, and 26 may be protected from disclosure under exemption 4 of the Freedom of Information Act (FOIA), which covers "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential" (5 U.S.C. 522(b)(4)). These questions concern any new or changed pledges of capital stock of any subsidiary savings association that secures short-term or long-term debt or other borrowings of the SLHC; changes to any class of securities of the SLHC or any of its subsidiaries that would negatively impact investors; and any default of the SLHC or any of its subsidiaries during the quarter. Disclosure of this type of information is likely to cause substantial competitive harm to the SLHC providing the information and thus this information may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 522(b)(4)).

With regard to the supplemental information for other FR 2320 questions that would be provided in item 3 of the FR H–(b)11, as well as item 4 (Other Materially Important Events), item 5 (Financial Statements) and item 6 (Exhibits—essentially copies not previously filed of its charter or bylaws), the respondent may request confidential treatment of such information under one or more of the exemptions in the FOIA. The most likely case for confidential treatment will be exemption 4 (5 U.S.C. 522(b)(4)). However, all such requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Proposed Revisions: The Federal Reserve proposes to eliminate the requirement that a publicly-traded SLHC submit a copy of its filings with the SEC.

Board of Governors of the Federal Reserve System, July 14, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–17358 Filed 7–21–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MV–2016–01; Docket No. 2016–0002; Sequence No. 9]

Public Availability of General Services Administration Fiscal Year 2015 Service Contract Inventory

AGENCY: General Services Administration (GSA).

ACTION: Notice of public availability of GSA Fiscal Year 2015 Service Contract Inventories.

SUMMARY: In accordance with The Fiscal Year (FY) 2010 Consolidated Appropriations Act, GSA is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventories.

DATES: July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Service Contract Inventory should be directed to Mr. James Tsujimoto, Office of Acquisition Policy, at 202–206–3585, or *james.tsujimoto@gsa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 743 of Division C of the FY 2010 Consolidated Appropriations Act (Pub. L. 111–117), GSA is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventories. These inventories provide information on service contract actions over $25,000 that were made in FY 2015. The information is organized by component to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with the guidance issued on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at: *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.* GSA has posted its inventory and a summary of the inventory at the following location: *http://www.gsa.gov/gsasci.*

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–17347 Filed 7–21–16; 8:45 am]

BILLING CODE 6820–61–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket Number: 107222016–1111–04]

Local Contracting Preference

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice of final policy.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) hereby issues notice of its final policy for implementing the local contracting preference requirement of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

DATES: *Effective Date:* July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Bisgeier, General Counsel, via email at *mark.bisgeier@restorethegulf.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RESTORE Act, Public Law 112–141 (July 6, 2012), codified at 33 U.S.C. 1321(t) and *note,* makes funds available for the restoration and protection of the Gulf Coast Region through a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). The Trust Fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012 under the Federal Water Pollution Control Act by responsible parties in connection with the *Deepwater Horizon* oil spill. These funds will be invested and made available through five components of the RESTORE Act. On December 14, 2015, the Department of Treasury (Treasury) issued final regulations (80 FR 77239) applicable to all five components that generally describe the responsibilities of the Federal and State entities that administer RESTORE Act programs and carry out restoration activities in the Gulf Coast Region.

Two of the five components, the Comprehensive Plan Component (sometimes referred to as the Council-Selected Restoration Component) and the Spill Impact Component, are administered by the Council, an independent federal entity created by the RESTORE Act. Under the Comprehensive Plan Component (33 U.S.C. 1321(t)(2)), the subject of this policy, 30 percent of the amount in the Trust Fund will be used to fund the operations of the Council and to carry out projects and programs adopted in the Council's Comprehensive Plan. An Initial Comprehensive Plan was adopted by the Council in August 2013 and is available at *https://www.restorethegulf.gov/sites/default/files/Final%20Initial%20Comprehensive%20Plan.pdf.*

Pursuant to the RESTORE Act at 33 U.S.C. 1321(t)(2)(D)(ii)(IV)(dd), on December 9, 2015, the Council finalized a Funded Priorities List (FPL) to be included as part of the Initial Comprehensive Plan, setting forth programs and projects to be funded and prioritized for further review. These programs and projects will help to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches and coastal wetlands of the Gulf Coast region. The FPL is available at *https://www.restorethegulf.gov/sites/default/files/FPL_FINAL_Dec9Vote_EC_Library_Links.pdf.*

Programs and projects selected for funding in the FPL will be funded either through grants to the State members of the Council (the Governors of the States of Alabama, Florida, Louisiana, Mississippi, and Texas) (State or States) or interagency agreements with the Federal members of the Council (the Secretaries of the Departments of Agriculture, the Army, Commerce, the Interior and the Department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency). Those State and Federal members of the Council may in turn award grants or contracts to carry out the funded programs and projects.

II. Discussion of This Policy and Response to Public Comments

The RESTORE Act requires the Council to "develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State." 33 U.S.C. 1321(t)(2)(C)(vii)(V). On May 22, 2015, the Council published in the **Federal Register** notice of its preliminary interpretation of this local contracting preference and described its proposed implementation of that interpretation (80 FR 29708). Public comment was requested and three public comments were received, one each from a private individual, a non-profit organization and a consortium of Gulf Coast organizations and businesses. The latter two commenters made similar recommendations and are addressed together.

Preliminarily, due to differing legal requirements in the various jurisdictions, the Council will apply the local contracting requirement at the Federal level (see comment topic 2 below) while permitting each State to apply any local contracting preference in conformity with local requirements. The Council will therefore not impose on the States any special grant award conditions requiring a local contracting preference or related contractual certifications. Each of the States has enacted laws pertaining to local contracting preferences, most of which do not address preferences for another State's local firms; in some cases such laws prohibit preferences for another State's local firms. If the Council were to require the States to provide preferences for another State's local firms, those States with prohibitions against such preferences would be unable to participate in the grant program. Having one or more of the States ineligible to receive grants under the Comprehensive Plan Component would be inconsistent with the intent and purposes of the RESTORE Act. Council policy for State contracting action using RESTORE Act funds is therefore to have each State act in conformance with its laws with respect to contracting preferences, with no further requirements. This policy is consistent with 2 CFR part 200.319(b), which permits grant recipients to apply state or local geographic preferences in the evaluation of bids or proposals only where a Federal statute, such as the RESTORE Act, expressly mandates or encourages geographical preference.

Comment topic 1: The private individual recommended that any local contracting preference not detract from existing Federal acquisition requirements, particularly those related to small business programs.

Response to comment topic 1: The Council will comply with all applicable Federal acquisition requirements.

Comment topic 2: The two comments from the non-profit organization and the consortium of organizations and businesses included arguments for a stronger local contracting preference, especially at the Federal level, and recommendations for various certifications and local workforce development plans, training and hiring process provisions.

Response to comment topic 2: At the Federal level, a local contracting preference is permitted only when a statute expressly authorizes or requires it. See 41 U.S.C. 3304(a)(5). The Council has determined that 33 U.S.C. 1321(t)(2)(C)(vii)(V) provides such an express authorization. To implement this at the Federal level, in May 2015 the Council proposed requiring federal agencies to either (1) provide a preference to Gulf Coast firms if proposals are determined equivalent under all other evaluation factors, or (2) include a weighted evaluation factor providing a preference to Gulf Coast firms (80 FR 29709). The non-profit organization recommended revising option (2) such that the agencies would be required to provide an explicit weight of 20% to the weighted evaluation factor. The Council has declined to do so. Assigning a specific weight to the local contractor preference factor unnecessarily limits the discretion of the contracting agency to tailor evaluation factors and their relative weights for each procurement. Further, contracting agencies are not required to assign specific percentage weights to each evaluation factor and doing so can result in a more quantitative than qualitative analysis of subjective evaluation factors. Agencies may use a variety of rating schemes, and requiring them to assign a specific percentage weight to the local contracting preference factor would be overly prescriptive and have the effect of restricting their ability to determine what constitutes best value for procurements on a case-by-case basis.

Instead of assigning a specific weight or otherwise changing the two foregoing options, the Council has instead decided to provide Federal member contracting agencies with a third option of including in contracts a financial incentive that rewards contractors for specific local hiring thresholds. Because this third option provides an explicit financial incentive, the Council believes that it may actually make achieving a local hiring objective more likely than either of the other options. The Council thanks the commenters for encouraging the Council to devise a more robust and creative option to encourage local contracting.

The two comments also included suggestions to include various certifications and contractual clauses to require offerors to develop and submit local workforce development plans and train local workers, and various mechanisms to process job opportunities through state and local hiring agencies. The Council declines to add these additional requirements for two reasons: First, the Council believes that requiring local training is beyond the scope of the RESTORE Act provision for a local contracting preference; and second, the Council is concerned that adding such additional requirements may actually discourage or inhibit local contractors from offering to undertake the work. It is the Federal members' collective experience that additional requirements can be burdensome to the point that potential offerors are discouraged from even participating in the contract proposal process. This is especially true with small, possibly local firms. Potentially discouraging local firms from participating would be inconsistent with the purpose of the local contracting preference.

The Council believes that offering the choice of one of the three options discussed above would provide Federal agencies with sufficient discretion to make an award to an offeror whose proposal provides the best value to the Government. Furthermore, in order to prevent a Gulf Coast firm from serving as merely a pass-through for a firm outside the Gulf Coast region or other avoidance the objective of the preference, to be considered a "local firm" an offeror must certify that it resides, is headquartered or is principally engaged in business in a State. The offeror must also agree that it will perform at least a minimum percentage of the work under the contract with either local employees or local manufacturing, as the case may be. The method for determining whether an offeror meets these tests is adapted from the Small Business Administration's regulation found at 13 CFR 125.6.

III. Provisions in Council Comprehensive Plan Interagency Agreements With Federal Members

The text below will therefore be included in all solicitations by federal Council members for Comprehensive Plan Component contracts, and will be incorporated into all awards for such contracts.

(a) The offeror represents as part of its offer that it ( ) is, ( ) is not a firm residing, headquartered or principally engaged in business in a Gulf Coast state. For purposes hereof, a "Gulf Coast state" is any of the states of Alabama, Florida, Louisiana, Mississippi or Texas.

(b) If the offeror (1) is a firm residing, headquartered or principally engaged in business in a Gulf Coast state and (2) agrees to the following applicable provisions and submits supporting documentation with its offer, then for purposes hereof the offeror will be deemed a "Gulf Coast Firm":

(i) For a contract for services (except construction), the offeror will perform services representing at least fifty percent (50%) of the total labor costs under the contract with employees that are residents of a Gulf Coast state;

(ii) For a contract for supplies or products (other than procurement from a non-manufacturer of such supplies or products), the offeror will manufacture, within a Gulf Coast state, such supplies or products representing at least fifty percent (50%) of the total manufacturing costs under the contract (excluding costs of materials); or

(iii) For a contract for general construction services, the firm will perform services representing at least fifteen percent (15%) of the total labor costs under the contract with employees that are residents of a Gulf Coast state.

(c) For purposes hereof, a "resident of a Gulf Coast state" means a resident as defined by the applicable Gulf Coast state law.

Additionally, one of the three options, generally in the form set forth below, will be included in all solicitations for Comprehensive Plan Component contracts by federal Council members. This term notifies prospective offerors that the Federal member contracting agency will either prefer Gulf Coast Firms in awarding Comprehensive Plan Component contracts or will include an incentive for contractors that perform the contracts using a certain percentage of residents of a Gulf Coast state.

Option 1 provides a preference to Gulf Coast Firms if proposals are determined to be equivalent under all other evaluation factors.

Option 2 provides a weighted evaluation factor providing a preference to Gulf Coast Firm offers. The solicitation should identify the relative weight of the local contracting preference to the other stated evaluation criteria.

Option 3 provides a financial incentive to contractors that perform the contract using a certain percentage of residents of a Gulf Coast state.

[Option 1] *It is the policy of [contracting agency] to encourage the participation of Gulf Coast Firms in the procurement process. This solicitation includes a preference for Gulf Coast Firms. If [contracting agency] determines all other factors to be equivalent, [contracting agency] will give preference to a Gulf Coast Firm. [contracting agency] will review your Gulf Coast Firm status at the time the contract solicitation closes.*

[Option 2—to be assigned relative weight by the contracting agency] *It is the policy of [contracting agency] to encourage the participation of Gulf Coast Firms in the procurement process. This solicitation includes a preference for Gulf Coast Firms. The [contracting agency] will review your Gulf Coast Firm status at the time the contract solicitation closes.*

[Option 3—Prescription]

It is the policy of the [contracting agency] to encourage contractors to hire residents of Gulf Coast states in connection with contracts for RESTORE Act Funded Priorities List projects. Accordingly, [contracting agency] will include the following Local Hiring Incentive Award provision in any contract for which [contracting agency] authorizes such an award.

[Option 3—Contract Provision]

(1) To qualify for the Local Hiring Incentive Award set forth in section (2) below, a contractor must, on or before [deadline date], submit to the cognizant contracting officer documentation verifying that during the contract's performance period (i.e., base period, option period), on average at least [percent] of the [contractor's employees and/or consultants and/or subcontractor employees] performing

work on the contract were residents of a Gulf Coast state.

(2) If the cognizant contracting officer confirms in writing that the contractor has satisfied the requirements of section (1) above, then subject to any applicable appropriations laws the contractor will be entitled to receive an award ("Local Hiring Incentive Award") equal to [percent] of the contract amount earned during the contract's performance period.

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2016–17328 Filed 7–21–16; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–317, CMS–319, CMS–10166, CMS–10178, and CMS–10184]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 22, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sample Plans; *Use:* The Medicaid Eligibility Quality Control (MEQC) system is based on monthly State reviews of Medicaid and Medicaid expansion under Title XXI cases by States performing the traditional sampling process identified through statistically reliable statewide samples of cases selected from the eligibility files. These reviews are conducted to determine whether or not the sampled cases meet applicable State Title XIX or XXI eligibility requirements when applicable. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases. In the MEQC system, sampling is the only practical method of validating eligibility of the total caseload and determining the dollar value of eligibility liability errors. Any attempt to make such validations and determinations by reviewing every case would be an enormous and unwieldy undertaking. In 1993, CMS implemented MEQC pilots in which States could focus on special studies, targeted populations, geographic areas or other forms of oversight with CMS approval. States must submit a sampling plan, or pilot proposal to be approved by CMS before implementing their pilot program. The Children's Health Insurance Program Reauthorization Act (CHIPRA) was enacted February 4, 2009. Sections 203 and 601 of the CHIPRA relate to MEQC. Section 203 of the CHIPRA establishes an error rate measurement with respect to the enrollment of children under the express lane eligibility option. The law directs States not to include children enrolled using the express lane eligibility option in data or samples used for purposes of complying with the MEQC requirements. Section 601 of the CHIPRA, among other things, requires a new final rule for the Payment Error Rate Measurement (PERM) program and aims to harmonize the PERM and MEQC programs and provides States with the option to apply PERM data resulting from its eligibility reviews for meeting MEQC requirements and vice versa, with certain conditions. We review, either directly or through its contractors, of the sampling plans helps to ensure States are using valid statistical methods for sample selection. The collection of information is also necessary to implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. *Form Number:* CMS–317 (OMB control number: 0938–0146); *Frequency:* Semi-Annually *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 10; *Total Annual Responses:* 20; *Total Annual Hours:* 480. (For policy questions regarding this collection contact Bridgett Rider at 410–786–2602.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sample Selection Lists; *Use:* The Medicaid Eligibility Quality Control (MEQC) system is based on monthly State reviews of Medicaid and Medicaid expansion under Title XXI cases by States performing the traditional sampling process identified through statistically reliable statewide samples of cases selected from the eligibility files. These reviews are conducted to determine whether or not the sampled cases meet applicable State Title XIX or XXI eligibility requirements when applicable. The reviews are also used to assess beneficiary liability, if any, and to determine the amounts paid to provide Medicaid services for these cases. In the MEQC system, sampling is the only practical method of validating eligibility of the total caseload and determining the dollar value of eligibility liability errors. Any attempt to make such validations and determinations by reviewing every case would be an enormous and unwieldy undertaking. At the beginning of each month, State agencies still performing the traditional sample are required to submit sample selection lists which identify all of the cases selected for review in the States' samples. The sample selection lists contain identifying information on Medicaid beneficiaries such as: State agency review number, beneficiary's name and address, the name of the county where the beneficiary resides, Medicaid case number, etc. The submittal of the sample selection lists is necessary for Regional Office validation of State reviews. Without these lists, the integrity of the sampling results would be suspect and the Regional Offices would have no data on the adequacy of the States' monthly sample draw or review completion status. The authority for collecting this information is Section 1903(u) of the Social Security Act. The specific requirement for submitting sample selection lists is described in regulations at 42 CFR 431.814(h). Regional Office staff review the sample selection lists to determine that States are sampling a sufficient number of cases for review. *Form Number:* CMS–319 (OMB control number: 0938–0147); *Frequency:* Monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 10; *Total Annual Responses:* 120; *Total Annual Hours:* 960. (For policy questions regarding this collection contact Bridgett Rider at 410–786–2602.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Payment Error Rate Measurement in Medicaid & Children's Health Insurance Program (CHIP); *Use:* The Improper Payments Information Act (IPIA) of 2002 as amended by the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 requires CMS to produce national error rates for Medicaid and Children's Health Insurance Program (CHIP). To comply with the IPIA, CMS will engage a Federal contractor to produce the error rates in Medicaid and CHIP. The error rates for Medicaid and CHIP are calculated based on the reviews on three components of both Medicaid and CHIP program. They are: Fee-for-service claims medical reviews and data processing reviews, managed care claims data-processing reviews, and eligibility reviews. Each of the review components collects different types of information, and the state-specific error rates for each of the review components will be used to calculate an overall state-specific error rate, and the individual state-specific error rates will be used to produce a national error rate for Medicaid and CHIP. The states will be requested to submit, at their option, test data which include full claims details to the contractor prior to the quarterly submissions to detect potential problems in the dataset to and ensure the quality of the data. These states will be required to submit quarterly claims data to the contractor who will pull a statistically valid random sample, each quarter, by strata, so that medical and data processing reviews can be performed. State-specific error rates will be based on these review results. We need to collect the fee-for-service claims data, medical policies, and other information from states as well as medical records from providers in order for the contractor to sample and review adjudicated claims in those states selected for medical reviews and data processing reviews. Based on the reviews, state-specific error rates will be calculated which will serve as part of the basis for calculating national Medicaid and CHIP error rates. *Form Number:* CMS–10166 (OMB control number: 0938–0974); *Frequency:* Annually, Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 34; *Total Annual Hours:* 56,100. (For policy questions regarding this collection contact Bridgett Rider at 410–786–2602.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid and State Children's Health Insurance Plan (SCHIP) Managed Care; *Use:* The Payment Error Rate Measurement (PERM) program measures improper payments for Medicaid and the State Children's Health Insurance Program (SCHIP). The program was designed to comply with the Improper Payments Information Act (IPIA) of 2002 and the Office of Management and Budget (OMB) guidance. Although OMB guidance requires error rate measurement for SCHIP, 2009 SCHIP legislation temporarily suspended PERM measurement for this program and changed to Children's Health Insurance Program (CHIP) effective April 01, 2009. See Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) Public Law 111–3 for more details. There are two phases of the PERM program, the measurement phase and the corrective action phase. The PERM measures improper payments in Medicaid and CHIP and produces State and national-level error rates for each program. The error rates are based on reviews of Medicaid and CHIP fee-for-service (FFS) and managed care payments made in the Federal fiscal year under review. States conduct eligibility reviews and report eligibility related payment error rates also used in the national error rate calculation. We created a 17 State rotation cycle so that each State will participate in PERM once every three years. Following is the list of States in which we will measure improper payments over the next three years in Medicaid. We need to collect capitation payment information from the selected States so that the federal contractor can draw a sample and review the managed care capitation payments. We will also collect State managed care contracts, rate schedules and updates to the contracts and rate schedules. This information will be used by the Federal contractor when conducting the managed care claims reviews. Sections 1902(a)(6) and 2107(b)(1) of the Social Security Act grants CMS authority to collect information from the States. The IPIA requires us to produce national error rates in Medicaid and CHIP fee-for-service, including the managed care component. The State-specific Medicaid managed care and CHIP managed care error rates will be based on reviews of managed care capitation payments in each program and will be used to produce national Medicaid managed care and CHIP managed care error rates.

Form Number: CMS–10178 (OMB control number: 0938–0994); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 28,050; *Total Annual Hours:* 28,050. (For policy questions regarding this collection contact Bridgett Rider at 410–786–2602.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Payment Error Rate Measurement—State Medicaid and SCHIP Eligibility; *Use:* The Improper Payments Information Act (IPIA) of 2002 requires CMS to produce national error rates for Medicaid and the Children's Health Insurance Program (CHIP). To comply with the IPIA, CMS will use a national contracting strategy to produce error rates for Medicaid and CHIP fee-for-service and managed care improper payments. The Federal contractor will review States on a rotational basis so that each State will be measured for improper payments, in each program, once and only once every three years. Subsequent to the first publication, we determined that we will measure Medicaid and CHIP in the same State. Therefore, States will measure Medicaid and CHIP eligibility in the same year measured for fee-for-service and managed care. We believe this approach will advantage States through economies of scale (*e.g.*, administrative ease and shared staffing for both programs reviews). We also determined that interim case completion timeframes and reporting are critical to the integrity of the reviews and to keep the reviews on schedule to produce a timely error rate. Lastly, the sample sizes were increased slightly in order to produce an equal sample size per strata each month. Periodically, CMS will conduct Federal re-reviews of States' PERM files to ensure the accuracy of States' review findings and the validity of the review process. CMS will select a random subsample of Medicaid and CHIP cases from the sample selection lists provided by each State. States will submit all pertinent information related to the review of each sampled case that is selected by CMS. *Form Number:* CMS–10184 (OMB control number: 0938–1012); *Frequency:* Annually, Quarterly *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 1,583; *Total Annual Hours:* 946,164. (For policy questions regarding this collection contact Bridgett Rider at 410–786–2602.)

Dated: July 18, 2016.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–17251 Filed 7–21–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–70, CMS–R–72, CMS–R–247, CMS–10151, CMS–10268, CMS–R–5, CMS–10615, and CMS–10062]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 20, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–70 Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer review Organization Information and Supporting Regulations
CMS–R–72 Information Collection Requirements in 42 CFR 478.18, 478.34, 478.36, 478.42, QIO Reconsiderations and Appeals
CMS–R–247 Expanded Coverage for Diabetes Outpatient Self-Management Training Services and Supporting Regulations
CMS–10151 Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-Defibrillators for Primary Prevention of Sudden Cardiac Death
CMS–10268 Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-party Submission Authorization Form
CMS–R–5 Physician Certification/Recertification in Skilled Nursing Facilities (SNFs) Manual Instructions
CMS–10615 Healthy Indiana Program (HIP) 2.0 Beneficiaries Survey, Focus Groups, and Informational Interviews
CMS–10062 Collection of Diagnostic Data from Medicare Advantage Organizations for Risk Adjusted Payments

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer review Organization Information and Supporting Regulations; *Use:* The Peer Review Improvement Act of 1982 authorizes quality improvement organizations (QIOs), formally known as peer review organizations (PROs), to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. The QIOs are required to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties. The information provided in these notices is used by the patients, practitioners and providers to: Obtain access to the data maintained and collected on them by the QIOs; add additional data or make changes to existing QIO data; and reflect in the QIO's record the reasons for the QIO's disagreeing with an individual's or provider's request for amendment. *Form Number:* CMS–R–70 (OMB control number: 0938–0426); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profits; *Number of Respondents:* 400; *Total Annual Responses:* 21,200; *Total Annual Hours:* 42,400. (For policy questions regarding this collection contact Winsome Higgins at 410–786–1835.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements in 42 CFR 478.18, 478.34, 478.36, 478.42, QIO Reconsiderations and Appeals; *Use:* In the event that a beneficiary, provider, physician, or other practitioner does not agree with the initial determination of a Quality Improvement Organization (QIO) or a QIO subcontractor, it is within that party's rights to request reconsideration. The information collection requirements 42 CFR 478.18, 478.34, 478.36, and 478.42, contain procedures for QIOs to use in reconsideration of initial determinations. The information requirements contained in these regulations are on QIOs to provide information to parties requesting the reconsideration. These parties will use the information as guidelines for appeal rights in instances where issues are actively being disputed. *Form Number:* CMS–R–72 (OMB control number: 0938–0443); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households and Business or other for-profit institutions; *Number of Respondents:* 2,590; *Total Annual Responses:* 5,228; *Total Annual Hours:* 2,822. (For policy questions regarding this collection contact Winsome Higgins at 410–786–1835.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Expanded Coverage for Diabetes Outpatient Self-Management Training Services and Supporting Regulations; *Use:* According to the National Health and Nutrition Examination Survey (NHANES), as many as 18.7 percent of Americans over age 65 are at risk for developing diabetes. The goals in the management of diabetes are to achieve normal metabolic control and reduce the risk of micro- and macro-vascular complications. Numerous epidemiologic and interventional studies point to the necessity of maintaining good glycemic control to reduce the risk of the complications of diabetes. Despite this knowledge, diabetes remains the leading cause of blindness, lower extremity amputations and kidney disease requiring dialysis. Diabetes and its complications are primary or secondary factors in an estimated 9 percent of hospitalizations (Aubert, RE, et al., Diabetes-related hospitalizations and hospital utilization. In: Diabetes in America. 2nd ed. National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Disease, NIH, Pub. No 95–1468–1995: 553–570). Overall, beneficiaries with diabetes are hospitalized 1.5 times more often than beneficiaries without diabetes. HCFA–3002–F provided for uniform coverage of diabetes outpatient self-management training services. These services include educational and training services furnished to a beneficiary with diabetes by an entity approved to furnish the services. The physician or qualified non-physician practitioner treating the beneficiary's diabetes would certify that these services are needed as part of a comprehensive plan of care. This rule established the quality standards that an entity would be required to meet in order to participate in furnishing diabetes outpatient self-management training services. It set forth payment amounts that have been established in consultation with appropriate diabetes organizations. It implements section 4105 of the Balanced Budget Act of 1997. *Form Number:* CMS–R–247 (OMB control number: 0938–0818); *Frequency:* Recordkeeping and Reporting—Occasionally; *Affected Public:* Business or other for-profit institutions; *Number of Respondents:* 5327; *Total Annual Responses:* 63,924; *Total Annual Hours:* 197,542. (For policy questions regarding this collection contact Kristin Shifflett at 410–786–4133.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Collection for Medicare Beneficiaries Receiving Implantable Cardioverter-Defibrillators for Primary Prevention of Sudden Cardiac Death; *Use:* We provide coverage for implantable cardioverter-defibrillators (ICDs) for secondary prevention of sudden cardiac death based on extensive evidence showing that use of ICDs among patients with a certain set of physiologic conditions are effective. Accordingly, we consider coverage for ICDs reasonable and necessary under Section 1862(a)(1)(A) of the Social Security Act. However, evidence for use of ICDs for primary prevention of sudden cardiac death is less compelling for certain patients.

To encourage responsible and appropriate use of ICDs, we issued a "Decision Memo for Implantable Defibrillators" on January 27, 2005, indicating that ICDs will be covered for primary prevention of sudden cardiac death if the beneficiary is enrolled in either an FDA-approved category B IDE clinical trial (42 CFR 405.201), a trial under the CMS Clinical Trial Policy (NCD Manual § 310.1) or a qualifying prospective data collection system (either a practical clinical trial or prospective systematic data collection, which is sometimes referred to as a registry). *Form Number:* CMS–10151 (OMB control number: 0938–0967); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 1,702; *Total Annual Responses:* 82; *Total Annual Hours:*

139,356. (For policy questions regarding this collection contact JoAnna Baldwin at 410–786–7205.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-party Submission Authorization Form; *Use:* The Consolidated Renal Operations in a Web Enabled Network (CROWNWeb) Third-Party Submission Authorization form (CWTPSA) is to be completed by "Facility Administrators" (administrators of CMS-certified dialysis facilities) if they intend to authorize a third party (a business with which the facility is associated, or an independent vendor) to submit data to us to comply with the recently-revised Conditions for Coverage of dialysis facilities. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and for federal government monitoring and assessing of the quality and types of care provided to renal patients. The information collected through the CWTPSA form will allow us along with our contractors to receive data from authorized parties acting on behalf of CMS-certified dialysis facilities. Since February 2009, we have received 4,160 CWTPSA forms and anticipates that they will continue to receive no more than 400 new CWTPSA forms annually to address the creation of new facilities under the current participating "third party submitters." *Form Number:* CMS–10268 (OMB control number: 0938–1052); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 400; *Total Annual Hours:* 34. (For policy questions regarding this collection contact Victoria Schlining at 410–786–6878.)

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Certification/Recertification in Skilled Nursing Facilities (SNFs) Manual Instructions; *Use:* Section 1814(a) of the Social Security Act (the Act) requires specific certifications in order for Medicare payments to be made for certain services. Before the enactment of the Omnibus Budget Reconciliation Act of 1989 (OBRA1989, Pub. L. 101–239), section 1814(a)(2) of the Act required that, in the case of post hospital extended care services, a physician certify that the services are or were required to be given because the individual needs or needed, on a daily basis, skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF on an inpatient basis. The physician certification requirements were included in the law to ensure that patients require a level of care that is covered by the Medicare program and because the physician is a key figure in determining the utilization of health services. *Form Number:* CMS–R–5 (OMB control number: 0938–0454); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 2,711,136; *Total Annual Responses:* 2,711,136; *Total Annual Hours:* 624,515. (For policy questions regarding this collection contact Kia Sidbury at 410–786–7816.)

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Healthy Indiana Program (HIP) 2.0 Beneficiaries Survey, Focus Groups, and Informational Interviews; *Use:* The collected information will be used to make decisions about the renewal of precedent-setting waivers of Medicaid policy that assure important beneficiary protections regarding coverage and access to care; *e.g.,* the State of Indiana's non-emergency medical transportation waiver which will end or will be extended by no later than December 1, 2016. To support CMS decision making, the collection's survey effort would provide more detailed information on the Healthy Indiana Program (HIP) 2.0 demonstration's beneficiary understanding and experiences (current and new enrollees as well as disenrollees/lockouts). Additional information on other key policies under the demonstration, such as the 60-day beneficiary lock-out period, is also included in this information collection request.

This request does not propose any new or revised information collection requirements or burden estimates outside of what is currently approved by OMB. Rather, it seeks to extend the collection's current expiration date of September 30, 2016 (approved under the emergency PRA process on March 21, 2016; see 81 FR 17460 dated March 29, 2106, and 81 FR 26798 dated May 4, 2016). Since the collection has already been subject to the public comment process for collection activities taking place through September 30, 2016, this "Extension of a currently approved collection" will only consider comments for activities taking place from October 1, 2016, through the end of the revised expiration date. The revised expiration date will be made available upon OMB approval at *reginfo.gov. Form Number:* CMS–10615 (OMB control number: 0938–1300); *Frequency:* Once; *Affected Public:* Individuals and households, Private sector (Business or other for-profits and Not-for-profits institutions), and State, Local, or Tribal Governments; *Number of Respondents:* 5,240; *Total Annual Responses:* 5,240; *Total Annual Hours:* 1,442. (For policy questions regarding this collection contact Teresa DeCaro at 202–384–6309.)

8. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare Advantage Organizations for Risk Adjusted Payments; *Use:* CMS requires hospital inpatient, hospital outpatient and physician diagnostic data from Medicare Advantage (MA) organizations to continue making payment under the risk adjustment methodology. CMS will use the data to make risk adjusted payment under Parts C and D. MA and MA–PD plans will use the data to develop their Part C and D bids. As required by law, CMS also annually publishes the risk adjustment factors for plans and other interested entities in the Advance Notice of Methodological Changes for MA Payment Rates (every February) and the Announcement of Medicare Advantage Payment Rates (every April). Lastly, CMS issues monthly reports to each individual plan that contains the CMS Hierarchical Condition Category (HCC) and RxHCC models' output and the risk scores and reimbursements for each beneficiary that is enrolled in their plan. *Form Number:* CMS–10062 (OMB control number: 0938–0878); *Frequency:* Quarterly; *Affected Public:* Private sector (Business or other for profit and Not-for-profit institutions); *Number of Respondents:* 691; *Total Annual Responses:* 83,000,000; *Total Annual Hours:* 40,650. (For policy questions regarding this collection contact Michael P. Massimini at 410–786–1566.)

Dated: July 19, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–17376 Filed 7–21–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Financial Report (ACF–696) for States and Territories.

OMB No.: 0970–0163.

Description: States and Territories use the Financial Report Form ACF–696 to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR part 98, subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

The form provides specific data regarding claims and provides a mechanism for States to request Child Care grant awards and to certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor Child Care and Development Fund expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

The previous information collection requirements related to the American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111–5) have been deleted from this reporting form.

Respondents: States and Territories

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1120

Estimated Total Annual Burden Hours: 1120.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–17359 Filed 7–21–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the "Advisory Group"). This meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.*

DATES: The meeting will be held on September 26, 2016, from 8:45 a.m. to 5 p.m. EST.

ADDRESSES: This meeting will be held at the CDC Washington Office, Room 9000, 395 E Street SW., Washington DC 20201. Space to accommodate public in-person attendance is very limited. Therefore, arrangements are being made for the public to have access to the meeting by teleconference. Teleconference information will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.* Individuals planning to attend the meeting by teleconference must register. The registration procedure is included in this notice under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201; 202–205–9517; *npcsupport@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary federal advisory committee that was initially established under Executive Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was terminated on September 30, 2012, by Executive Order 13591, dated November 23, 2011. Authority for the Advisory Group to be re-established was given under Executive Order 13631, dated December 7, 2012. Authority for the Advisory Group to continue to operate until September 30, 2017, was given under Executive Order 13708, dated September 30, 2015.

The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council.

It is authorized for the Advisory Group to consist of no more than 25 non-federal members. The Advisory Group currently has 21 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

A meeting description and relevant materials will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.* Members of the public have the opportunity to participate in the meeting and/or provide comments via teleconference to the Advisory Group on September 26, 2016. Public comment will be limited to 3 minutes per speaker. Individuals who wish to participate in the meeting and/or provide comments via teleconference must register by 12:00 p.m. EST on September 19, 2016. In order to register, individuals must send their full name and affiliation via email to *npcsupport@cdc.gov.* Individuals who need special assistance and/or accommodations, *i.e.,* sign language interpretation or other reasonable accommodations, should indicate so when they register. Members of the public who wish to have materials distributed to the Advisory Group members at these scheduled meetings should submit those materials when they register.

Dated: July 5, 2016.

Brigette Ulin, MPH,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2016–17385 Filed 7–21–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Alcohol Abuse and Alcoholism, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: September 13–14, 2016.

Time: 8:15 a.m. to 5:15 p.m.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: National Institutes of Health, 5625 Fishers Lane, 5th Floor, Conference Room, Rockville, MD 20892.

Contact Person: George Kunos, Ph.D., M.D., Scientific Director, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5625 Fishers Lane, Rockville, MD 20852 301–443–2069 *gkunos@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 18, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17298 Filed 7–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Development and Optimization.

Date: July 28, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17297 Filed 7–21–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on August 24, 2016, 9:00 a.m.–5:00 p.m. (EDT) and will include a session that is closed to the public.

The open session of the meeting will be held from 9:00 a.m.–4:00 p.m. and will include consideration of minutes from the SAMHSA CSAT NAC meeting of February 24, 2016, the Director's report, discussions of SAMHSA's role regarding treatment of mental illness, substance use disorders, and a budget update.

The closed meeting will include the review of grant applications, which contain budget information, including the description of how an agency prices its services, information on proposed business relationships and subcontracts. Grant applications also contain personal information and contact information on agency principles. Since the closed meeting will include discussion and evaluation of grant applications reviewed by Initial Review Groups and involve an examination of confidential financial and business information as well as personal information concerning the applicants, it will be closed to the public from 4:05 p.m. to 5:00 p.m. as determined by the Principal Deputy SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (6) and Title 5 U.S.C. App. 2, Section 10(d).

The meeting will be held at the SAMHSA 5600 Fishers Lane, Conference Room 5 E29, Rockville, MD 20857. Attendance by the public will be limited to space available and will be limited to the open sessions of the meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before August 15, 2016. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before August 15, 2016. Five minutes will be allotted for each presentation.

The open meeting session may be accessed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT national Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee Web site at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment, National Advisory Council.

Date/Time/Type: August 24, 2016, 9:00 a.m.–4:00 p.m. EDT, OPEN; August 24, 2016, 4:05 p.m.–5:00 p.m. EDT, CLOSED.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, *Email: tracy.goss@samhsa.hhs.gov.*

Summer King,

Statistician, SAMHSA.

[FR Doc. 2016–17346 Filed 7–21–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Extension of the Air Cargo Advance Screening (ACAS) Pilot Program

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: On October 24, 2012, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** that announced the formalization and expansion of the Air Cargo Advance Screening (ACAS) pilot program that would run for six months. CBP subsequently published several notices extending the pilot period and/or reopening the application period to new participants for limited periods. The most recent notice extended the pilot period through July 26, 2016. This document announces that CBP is extending the pilot period for an additional year. The ACAS pilot is a voluntary test in which participants submit a subset of required advance air cargo data to CBP at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States.

DATES: CBP is extending the ACAS pilot program through July 26, 2017. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

ADDRESSES: Written comments concerning program, policy, and technical issues may be submitted via email to *CBPCCS@cbp.dhs.gov.* In the subject line of the email, please use "Comment on ACAS pilot".

FOR FURTHER INFORMATION CONTACT: Craig Clark, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *craig.clark@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2012, CBP published a general notice in the **Federal Register** (77 FR 65006, corrected in 77 FR 65395)[1] announcing that CBP is formalizing and expanding the ACAS pilot to include other eligible participants in the air cargo environment. The notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comments on any aspect of the test. In brief, the ACAS pilot revises the time frame for pilot participants to transmit a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 specify the required data elements and the time frame for submitting them to CBP. Pursuant to title 19, Code of Federal Regulations (19 CFR) 122.48a, the required advance information for air cargo must be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations.

The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. The ACAS data is used to target high-risk air cargo. CBP is considering possible amendments to the regulations regarding advance information for air cargo. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data must be submitted to permit CBP to effectively target, identify and mitigate any risk with the least practicable impact on trade operations, and any other related procedures and policies.

Extension of the ACAS Pilot Period

The October 2012 notice announced that the ACAS pilot would run for six months. The notice provided that if CBP determined that the pilot period should be extended, CBP would publish another notice in the **Federal Register**. The October 2012 notice also stated that applications for new ACAS pilot participants would be accepted until November 23, 2012. CBP subsequently published several notices extending the pilot period and/or reopening the application period to new participants for limited periods. On December 26, 2012, CBP published a notice in the **Federal Register** (77 FR 76064) reopening the application period for new participants until January 8, 2013. On January 3, 2013, the **Federal Register** published a correction (78 FR 315) stating that the correct date of the close of the reopened application period was January 10, 2013. On April 23, 2013, CBP published a notice in the **Federal Register** (78 FR 23946) extending the ACAS pilot period through October 26, 2013, and reopening the application period through May 23, 2013. On October 23, 2013, CBP published a notice in the **Federal Register** (78 FR

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[1] This **Federal Register** notice, published on October 26, 2012, corrected the email address under the **ADDRESSES** heading for submitting applications or comments. The correct email address is *CBPCCS@cbp.dhs.gov.*

63237) extending the ACAS pilot period through July 26, 2014, and reopening the application period through December 23, 2013. On July 28, 2014, CBP published a notice in the **Federal Register** (79 FR 43766) extending the ACAS pilot period through July 26, 2015, and reopening the application period through September 26, 2014. Finally, on July 27, 2015, CBP published a notice in the **Federal Register** (80 FR 44360) extending the ACAS pilot period through July 26, 2016, and reopening the application period through October 26, 2015.

Each extension of the pilot period and reopening of the application period has allowed for a significant increase in the diversity and number of pilot participants. The current pilot participants now represent a strong sample size of the air cargo community and new pilot participants will not be accepted.

CBP intends to issue a notice of proposed rulemaking to incorporate ACAS as an ongoing regulatory program taking into account the results of the pilot and has begun work on that process. CBP would like the pilot to continue during the rulemaking process. This will provide continuity in the flow of advance air cargo security information and serve as a stop-gap measure to address the vulnerability of the air cargo supply chain identified by the October 2010 Yemen cargo plot. CBP would also like to provide pilot participants with the additional opportunity to adjust and test business procedures and operations in preparation for the forthcoming rulemaking.

For these reasons, CBP is extending the ACAS pilot period through July 26, 2017.

Dated: July 19, 2016.

Todd C. Owen,

Executive Assistant Commissioner, Office of Field Operations.

[FR Doc. 2016–17366 Filed 7–21–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID DHS–2016–0040]

The President's National Security Telecommunications Advisory Committee

AGENCY: Department of Homeland Security.

ACTION: Committee management; Notice of Federal Advisory Committee meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via teleconference on Wednesday, August 10, 2016. The meeting will be open to the public.

DATES: The NSTAC will meet on Wednesday, August 10, 2016, from 2:00 p.m. to 2:40 p.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance to attend, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. EDT on August 9, 2016.

Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that participants may discuss during the meeting will be available at *www.dhs.gov/nstac* for review as of August 1, 2016. Comments may be submitted at any time and must be identified by docket number DHS–2016–0040. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the docket number DHS–2016–0040 in the subject line of the email message.
- *Fax:* 703–235–5961, Attn: Helen Jackson.
- *Mail:* Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0604, Arlington, VA 20598–0604.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information that has been provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number DHS–2016–0040.

A public comment period will be held during the conference call on August 10, 2016, from 2:30 p.m. to 2:40 p.m. EDT. Speakers who wish to participate in the public comment period must register in advance by no later than August 9, 2016, at 5:00 p.m. EDT by emailing NSTAC at *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, 703–235–5321.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. appendix. The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The NSTAC will hold a conference call on August 10, 2016, to discuss issues and challenges related to NS/EP communications, which will include discussions with high-level Government stakeholders and a review of on-going NSTAC work, including an update on the Emerging Technologies Strategic Vision Subcommittee.

Dated: July 13, 2016.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2016–17392 Filed 7–21–16; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5915–N–06]

60-Day Notice of Proposed Information Collection: Notice of Proposed Information Collection for Public Comment: Evaluation of the Office of Public and Indian Housing's (PIH) Energy Performance Contracting (EPC) Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 20, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the Office of Public and Indian Housing's (PIH) Energy Performance Contracting (EPC) Program.

OMB Approval Number: None.

Type of Request: This is a new request.

Form Number: None.

Description of the need for the information and proposed use: The information is being collected to explore and document the effectiveness and value of HUD's Energy Performance Contracting (EPC) program. EPCs are an innovative financing technique designed to provide Public Housing Authorities (PHAs) with cost-effective energy improvements that are installed with little or no up-front expenditures, wherein the costs of the improvements are typically borne by the performance contractor and repaid using a portion of the cost savings resulting from the improvements. HUD has approved approximately 315 EPCs, totally nearly $1.5 billion in investments, since this type of financing began in the 1980s. EPCs have been executed in all ten HUD Regions and in very small (less than 250 units) to very large (more than 6,599 units) PHAs; however to date, no substantive review of the program's performance has been conducted. The proposed data collection instrument is a web-based survey that will be supported by follow-up telephone interviews to a subset of the study's participants.

Respondents (*i.e.* affected public): Employees of housing organizations receiving funding from HUD, specifically public housing authorities.

Estimated Number of Respondents: 492 (consisting of PHAs that have: (1) Executed an EPC, (2) begun the EPC application process but didn't execute the EPC, and (3) never been associated with an EPC),

Estimated Number of Responses: 394 (based on an 80% response rate, web survey or telephone interviews).

Frequency of Response: 1.

Average Hours per Response: 0.79 (weighted average).

Total Estimated Burdens: 312.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Web Survey	328	1	1	0.75	246	$44.15	$10,861
Telephone Interview	66	1	1	1	66	44.15	2,914
Total	394	....	....	....	312	....	13,775

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 11, 2016.

Matthew E. Ammon,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–17391 Filed 7–21–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov* .

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 14, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2016–17067 Filed 7–21–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5910–N–11]

60-Day Notice of Proposed Information Collection: HOME Investment Partnership Program

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 20, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Peter Huber, Deputy Director, Office of Affordable Housing Program, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Peter Huber at *Peter.h.huber@hud.gov* or telephone (202) 402–3941. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HOME Investment Partnerships Program (HOME).

OMB Approval Number: 2506–0171.

Type of Request: Extension of currently approved collection.

Form Number: HUD 40093, SF 1199A, HUD 27055, HUD 40107, HUD 40107A.

Description of the need for the information and proposed use: The information collected through HUD's Integrated Disbursement and Information System (IDIS) (24 CFR 92.502) is used by HUD Field Offices, HUD Headquarters, and HOME Program Participating Jurisdictions (PJs). The information on program funds committed and disbursed is used by HUD to track PJ performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 92.500(d)). The project-specific property, tenant, owner, and financial data is used to compile annual reports to Congress required at Section 284(b) of the HOME Investment Partnerships Act, as well as to make program management decisions about how well program participants are achieving the statutory objectives of the HOME Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HOME funds. These reports are provided to HUD staff as well as to HOME PJs.

Management reports required in conjunction with the Annual Performance Report (§ 92.509) are used by HUD Field Offices to assess the effectiveness of locally designed programs in meeting specific statutory requirements and by Headquarters in preparing the Annual Report to Congress. Specifically, these reports permit HUD to determine compliance with the requirement that PJs provide a 25 percent match for HOME funds expended during the Federal fiscal year (Section 220 of the Act) and that program income be used for HOME eligible activities (Section 219 of the Act), as well as the Women and Minority Business Enterprise requirements (§ 92.351(b)).

Financial, project, tenant and owner documentation is used to determine compliance with HOME Program cost limits (Section 212(e) of the Act), eligible activities (§ 92.205), and eligible costs (§ 92.206), as well as to determine whether program participants are achieving the income targeting and affordability requirements of the Act (Sections 214 and 215). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 92.504) and tenant protections (§ 92.253) are required to ensure that the property owner complies with these important elements of the HOME Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks PJ performance and compliance with the requirements of 24 CFR parts 91 and 92. PJs use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

Respondents (*i.e.* affected public): State and local government participating jurisdictions.

Estimated Number of Respondents: 6,667.

Estimated Number of Responses: 244,127.

Frequency of Response: Most data is collected annually, though there are specific items that are requested semi-annually or quarterly.

Average Hours per Response: 2.74 hours.

Total Estimated Burdens: 738,270 hours.

Reg. section	Paperwork requirement	Number of responses	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Annual cost
§ 92.61	Program Description and Housing Strategy for Insular Areas.	4	Annual	1	10	40	$1,480
§ 92.66	Reallocation—Insular Areas.	4	Annual	1	3	12	444
§ 92.101	Consortia Designation	36	Annual	1	5	180	6,660
§ 92.201	State Designation of Local Recipients.	51	Annual	1	1.5	77	2,831

Reg. section	Paperwork requirement	Number of responses	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Annual cost
§ 92.200	Private-Public Partnership	594	Annual	1	2	1,188	43,956
§ 92.201	Distribution of Assistance ..	594	Annual	1	2	1,188	43,956
§ 92.202	Site and Neighborhood Standards.	594	Annual	1	2	1,188	43,956
§ 92.203	Income Determination	6,667	Annual	1	2	13,334	493,358
§ 92.203	Income Determination	85,000	Annual	1	0.75	63,750	2,358,750
§ 92.205(e) ...	Terminated Projects	180	Annual	1	5	900	33,300
§ 92.206	Eligible Costs—Refinancing.	100	Annual	1	4	400	14,800
§ 92.210	Troubled HOME-Assisted Rental Projects.	25	Annual	1	0.5	13	463
§ 92.206	Documentation required by HUD to be included in project file to determine project eligibility.	6,667	Annual	1	5	33,335	1,233,395
§ 92.251(a) ...	Rehabilitation Projects—New Construction.	3,400	Semi-Annually + Annual.	3	3	10,200	377,400
§ 92.251(b) ...	Rehabilitation Projects—Rehabilitation.	5,100	Semi-Annually.	2	2	10,200	377,400
§ 92.252	Qualification as affordable housing: Rental Housing:.	50	Quarterly + Annual.	5	25	1,250	46,250
§ 92.252(j)	Fixed and Floating HOME Rental Units.	45	Annual	1	1	45	1,665
§ 92.251	Written Property Standards	6,667	Semi-Annually + Annual.	3	3	20,001	740,037
§ 92.253	Tenant Protections (including lease requirement).	6,667	Annual	1	5	33,335	1,233,395
§ 92.254	Homeownership—Median Purchase Price.	80	Annual	1	5	400	14,800
§ 92.254	Homeownership—Alternative to Resale/recapture.	100	Annual	1	5	500	18,500
§ 92.254(a)(5)	Homeownership—Approval of Resale & Recapture.	2,000	Annual	1	1.5	3,000	111,000
§ 92.254(a)(5)	Homeownership—Fair Return & Affordability.	2	Annual	1	1	2	74
§ 92.254(f)	Homeownership program policies.	600	Annual	1	5	3,000	111,000
§ 92.300	CHDO Identification	594	Annual	1	2	1,188	43,956
§ 92.300	CHDO Project Assistance	594	Annual	1	2	1,188	43,956
§ 92.303	Tenant Participation Plan ..	4,171	Annual	1	10	41,710	1,543,270
§ 92.351	Affirmative Marketing	1,290	Annual	1	5	6,450	238,650
§ 92.354	Labor	6,667	Annual	1	2.5	16,668	616,698
§ 92.355	Lead-based paint	6,667	Annual	1	1	6,667	246,679
§ 92.357	Debarment and Suspension.	6,667	Annual	1	1	6,667	246,679
§ 92.501	HOME Investment Partnership Agreement (HUD 40093).	598	Annual	1	1	598	22,126
§ 92.504	Participating Jurisdiction's Written Agreements.	6,667	Annual	1	10	66,670	2,466,790
§ 91.616	Confirm first-time homebuyer status.	427	Annual	1	0.1	43	1,580
§ 92.300	Designation of CHDOs	480	Annual	1	1.5	720	26,640
§ 92.501	HOME Investment Partnership Agreement (HUD 40093).	598	Annual	1	1	598	22,126
§ 92.502	Homeownership and Rental Set-Up and Completion.	594	Annual	1	16	9,504	351,648
§ 92.502	Tenant-Based Rental Assistance Set-Up (IDIS).	225	Annual	1	5.5	1,238	45,788
§ 92.502	Performance Measurement Set-Up and Completion Screens (IDIS).	6,671	Annual	1	21	140,091	5,183,367
§ 92.502	Input first-time homebuyer status (IDIS).	427	Annual	1	0.2	85	3,160
§ 92.502	IDIS Access Request form (HUD 27055).	50	Annual	1	0.5	25	925
§ 92.502(a) ...	Required Reporting of Program Income.	645	Annual	1	12	7,740	286,380

Reg. section	Paperwork requirement	Number of responses	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Annual cost
§ 92.504(a) ...	Required Policies and Procedures/Risk Analysis.	645	Annual	1	8	5,160	190,920
§ 92.504(c) ...	Written Agreement	8,500	Annual	1	1	8,500	314,500
§ 92.504(d)(2)	Financial Oversight and HOME Rental projects.	18,500	Annual	1	1	18,500	684,500
§ 92.508	Recordkeeping—Subsidy Layering and Underwriting.	13,302	Annual	1	4	53,208	1,968,696
§ 92.508	Recordkeeping (Additional)	10,110	Annual	1	1	10,110	374,070
§ 92.509	Annual Performance Reports (HUD 40107).	598	Annual	1	2.5	1,495	55,315
§ 92.509	Management Reports—FY Match Report (HUD 40107A).	594	Annual	1	0.75	446	16,484
§ 92.550 § 91.525.	HUD Monitoring of Program Documentation and Activities.	645	Annual	1	0.25	161	5,966
§ 91.220	Describe the use of ADDI funds.	427	Annual	1	1	427	15,799
§ 91.220	Describe the plan for outreach.	427	Annual	1	1	427	15,799
§ 91.220	Describe plan to ensure suitability.	427	Annual	1	1	427	15,799
§ 91.604	Describe prior commitment	37	Annual	1	1	37	1,369
	Direct Deposit Sign up form (SF 1199A).	10	Annual	1	0.16	2	59
Totals	....	244,127	....	....	....	738,270	27,315,990

Annual cost is based on Actual Burden Hours (738,270) * the hourly rate for a GS–12 ($37).

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 15, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–17390 Filed 7–21–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A21000DD/AAKC001030/ A0A501010.9999.00]

Final Environmental Impact Statement for the Pokagon Band of Potawatomi Indians Fee to Trust Transfer for Tribal Village and Casino, City of South Bend, St. Joseph County, Indiana

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Indian Affairs (BIA) as the lead Federal agency, with the Pokagon Band of Potawatomi Indians, the Environmental Protection Agency, and U.S. Army Corps of Engineers as cooperating agencies, has prepared a Final Environmental Impact Statement (FEIS) for the proposed approval of the fee-to-trust transfer of land located within the municipal limits of the City of South Bend, Indiana, for the construction of tribal housing, government facilities, and a Class III gaming facility. This notice also announces the FEIS is now available for public review. Copies are available upon request or may be found at the addresses indicted in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The Record of Decision (ROD) on the proposed action will be issued no sooner than 30 days after the release of the FEIS.

ADDRESSES: You may request a copy of the FEIS by contacting Ms. Diane Rosen, Regional Director, Midwest Region, Bureau of Indian Affairs, 5600 West American Boulevard, Suite 500, Bloomington, MN 55437, telephone (612) 725–4500, fax (612) 713–4401. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for directions on how to obtain a copy of the FEIS.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Doig, Regional Environmental Scientist, Midwest Region, Bureau of Indian Affairs, 5600 West American Boulevard, Suite 500, Bloomington, MN 55437, telephone (612) 725–4514, fax (612) 713–4401.

SUPPLEMENTARY INFORMATION: The Pokagon Band of Potawatomi Indians (Tribe) has requested BIA to take 165.81 acres, more or less, into trust on behalf of the Tribe, on which the Tribe proposes to develop a casino-hotel complex. The proposed project is located within the municipal limits of the City of South Bend, in St. Joseph County, Indiana. The BIA serves as lead agency for compliance with the National Environmental Policy Act (NEPA). The Tribe, Environmental Protection Agency, and U.S. Army Corps of

Engineers, as entities having jurisdiction and special expertise relevant to potentially affected resources, are acting as cooperating agencies.

The purpose of the proposed action is to improve access to essential tribal government services, and provide housing, employment opportunities and economic development for the tribal community residing in northern Indiana. The Tribe proposes to develop 44 housing units, a multi-purpose facility, health service, and other tribal government facilities. The Tribe also proposes to develop a Class III gaming facility with a hotel, restaurants, meeting space, and a parking garage. A range of project alternatives is considered in the FEIS, including: (1) Preferred Alternative-South Bend tribal housing, government facilities, and casino; (2) Elkhart site with same uses as the preferred alternative; (3) South Bend site with government facilities and commercial development; and (4) no action. Alternative 1, the Preferred Alternative, reflects the Tribe's proposed project and has been selected as the Preferred Alternative as discussed in the FEIS. The information and analysis contained in the EIS, as well as its evaluation and assessment of the Preferred Alternative, are intended to assist the review of the issues presented in the Tribe's fee-to-trust application. The Preferred Alternative does not necessarily reflect the Department of the Interior's (Department) final decision, because the Department must evaluate all of the criteria in 25 CFR part 151. The Department's consideration and analysis of the applicable criteria may lead to a final decision that selects an alternative other than the Preferred Alternative. Environmental issues addressed in the FEIS include land and water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions, transportation and circulation, land use, public services, noise, hazardous materials, visual resources, environmental justice, cumulative effects, indirect effects, and mitigation.

The BIA has afforded other government agencies and the public opportunity to participate in the preparation of this FEIS. The BIA published a Notice of Intent to Prepare an EIS (NOI) for the proposed action in the **Federal Register** on August 24, 2012. *See* 77 FR 51558. The BIA held a public scoping meeting on September 27, 2012, in South Bend, Indiana. A Notice of Availability (NOA) for the Draft EIS (DEIS) was published in the **Federal Register** on March 12, 2015. *See* 80 FR 13014. The document was available for public comment from March 12, 2015 to April 28, 2015, and a public hearing was held on April 14, 2015, in South Bend, Indiana.

Locations where the FEIS is Available for Review: The FEIS will be available at the South Bend Public Library, Main Branch, 304 S. Main St., South Bend, IN 46601, and the Elkhart Public Library, Main Branch, 300 S 2nd St, Elkhart, IN 46516. An electronic version of the FEIS can be viewed at the following Web site: *www.pokagonsouthbendeis.com*. If you would like to obtain a compact disc copy of the FEIS, please provide your name and address in writing or by voicemail to the person listed in the **ADDRESSES** section of this notice. Individual paper copies of the FEIS will be provided only upon payment of applicable printing expenses by the requestor for the number of copies requested.

Authority: This notice is published pursuant to Sec. 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 11, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–17074 Filed 7–21–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–20796; PPNEHATUC0, PPMRSCR1Y.CU0000 (166)]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; National Underground Railroad Network to Freedom Program

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on July 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before August 22, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Mail Stop 242), Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include "1024–0232" in the subject line of your comments. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Diane Miller, National Manager, National Underground Railroad Network to Freedom Program, National Park Service, National Park Service, c/o Blackwater National Wildlife Refuge, 2145 Key Wallace Drive, Cambridge, Maryland 21613; or via email at *diane_miller@nps.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Underground Railroad Network to Freedom Act of 1998 (54 U.S.C. 308301, *et seq.*) authorizes the Secretary of the Interior to establish the Network to Freedom (Network). The Network is a collection of sites, facilities, and programs, both governmental and nongovernmental, around the United States. All entities must have a verifiable association with the historic Underground Railroad movement. The National Park Service administers the National Underground Railroad Network to Freedom Program. The program coordinates preservation and education efforts Nationwide and integrates local historical places, museums, and interpretive programs associated with the Underground Railroad into a mosaic of community, regional, and national stories.

Individuals; businesses; organizations; State, tribal and local governments; and Federal agencies that want to join the Network must complete NPS Form 10–946 (National Underground Railroad Network to Freedom Application). The application and instructions are available on our Web site at *http://www.nps.gov/subjects/ugrr/index.htm.* Respondents must (1) verify associations and characteristics through descriptive texts that are the result of historical research and (2) submit supporting documentation; *e.g.*, copies of rare documents, photographs, and maps. Much of the information is submitted in electronic format and used to determine eligibility to become part of the Network.

One of the principal components of the Network to Freedom Program is to validate the efforts of local and regional organizations, and to make it easier for them to share expertise and communicate with us and each other. The vehicle through which this can happen is for these local entities to become Network Partners. Partners of the Network to Freedom Program work alongside and often in cooperation with us to fulfill the program's mission. Prospective partners must submit a letter with the following information:

- Name and address of the agency, company or organization;
- Name, address, and phone, fax, and email information of principal contact;
- Abstract not to exceed 200 words describing the partner's activity or mission statement; and
- Brief description of the entity's association to the Underground Railroad.

II. Data

OMB Number: 1024–0232.

Title: National Underground Railroad Network to Freedom Program.

Form Number(s): NPS Form 10–946, "National Underground Railroad Network to Freedom Application".

Type of Request: Revision of a currently approved collection of information.

Description of Respondents: Individuals; businesses; nonprofit organizations; and Federal, State, tribal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Network Applications (NPS Form 10–946)	35	35	40 hours	1,400
Partner Requests	2	2	.5 hours	1
Totals	37	37		1,401

Estimated Annual Nonhour Burden Cost: None.

III. Comments

On January 15, 2016, we published in the **Federal Register** (81 FR 2232) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending on March 15, 2016. We did not receive any comments in response to that notice.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB or us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: July 18, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–17360 Filed 7–21–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2014–0001]

Draft Environmental Impact Statement for the Cook Inlet Outer Continental Shelf Oil and Gas Lease Sale 244; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability (NOA) of a Draft Environmental Impact Statement.

SUMMARY: BOEM is announcing the availability of the Draft Environmental Impact Statement (EIS) for the proposed Cook Inlet Outer Continental Shelf Oil and Gas Lease Sale 244. This notice marks the start of the public review and comment period and serves to announce public hearings on the Draft EIS. After the public hearings and written comments on the Draft EIS have been reviewed and considered, a Final EIS will be prepared.

The proposed action addressed in this Draft EIS is to conduct an oil and gas lease sale on portions of the Cook Inlet Outer Continental Shelf (OCS) Planning Area. Lease Sale 244 would provide qualified bidders the opportunity to bid on OCS blocks in Cook Inlet to gain conditional rights to explore, develop, and produce oil and natural gas.

The Draft EIS analyzes the potential direct, indirect, and cumulative environmental impacts of the proposed lease sale on the physical, biological, and human environments in the Cook Inlet area. The EIS describes a hypothetical scenario of exploration, development, production, and decommissioning activities that could result from the proposed lease sale, and analyzes the potential impacts of those activities on the environment.

Authority: This Notice of Availability for the Draft EIS is in compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4231 *et seq.*), and is published pursuant to 43 CFR 46.415.

DATES: Comments should be submitted no later than September 6, 2016. See public hearing dates in the **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION: On August 27, 2012, the Secretary of the Interior approved the June 2012 *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012–2017* (Five-Year Program). The Five-Year Program includes proposed Lease Sale 244.

The proposed Lease Sale 244 area defined in the Area Identification (Area ID) is located offshore of the State of Alaska in the northern portion of the Federal waters of Cook Inlet. The Area ID is comprised of 224 OCS blocks, which encompass an area of approximately 442,875 hectares (1.09 million acres). This area is close to infrastructure needed to support exploration, development, and production activities.

The Area ID includes areas identified by industry in their responses to a March 27, 2012, Request for Interest. The proposed lease sale area also defers certain areas from consideration due to potential conflicts with areas of high ecological and subsistence value. These include: (1) The majority of the designated critical habitat areas for beluga whale and northern sea otter, and all of the critical habitat areas for Stellar sea lions and the North Pacific right whale, that are located within the Planning Area; (2) a buffer between the area considered for leasing and the Katmai National Park and Preserve, the Kodiak National Wildlife Refuge, and the Alaska Maritime National Wildlife Refuge; and (3) many of the subsistence use areas for the Native Villages of Nanwalek, Seldovia, and Port Graham identified during the Cook Inlet Lease Sale 191 process.

On October 23, 2014, BOEM published in the **Federal Register** a Notice of Intent (NOI) to prepare an EIS in support of Lease Sale 244. Publication of the NOI opened a public comment period that extended through December 8, 2014. In November 2014, BOEM held a series of scoping meetings for the EIS. The 26 comments received during this scoping period were used to inform the scope and content of this Draft EIS.

In this Draft EIS, BOEM has examined the potential environmental effects of activities that could result from the Lease Sale 244 proposed action, along with several alternatives. The Draft EIS is based on BOEM estimates of the potential oil and gas resources in the proposed lease sale area and an associated scenario that estimates a range of potential oil and gas activities, including exploration seismic surveying, on-lease ancillary activities, exploration and delineation drilling, development, production, and decommissioning.

Draft EIS Availability: Persons interested in reviewing the Cook Inlet Lease Sale 244 Draft EIS (OCS EIS/EA BOEM–2016–004) can download it from the Internet at *http://www.boem.gov/ak-eis-ea/* or they may contact BOEM by calling (907) 334–5200 to request a paper copy (subject to availability) or a CD/ROM version. The Draft EIS will also be available for review at libraries in towns adjacent to the proposed lease sale and at multiple libraries in Anchorage.

Comments: All interested parties, including Federal, State, Tribal, and local governments, and the public are invited to submit written comments on the Draft EIS at: Federal eRulemaking Portal: *http://www.regulations.gov.* In the field entitled, "Enter Keyword or ID," enter BOEM–2014–0001, and then click "Search."

BOEM does not consider anonymous comments; please include your name and address as part of your submittal. Individual respondents may request that BOEM withhold their names and/or addresses from the public record; however, BOEM cannot guarantee that we will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations, businesses, and identified individuals will be available for public viewing on *regulations.gov.*

Public Hearings: BOEM will hold public hearings on the Draft EIS from August 15, 2016, through August 18, 2016. The purpose of these hearings is to receive public comments on the Draft EIS. These hearings are scheduled as follows:

- Monday, August 15, 2016; Dena'ina Civic and Convention Center, Anchorage, Alaska; 5:00–8:00 p.m.
- Wednesday, August 17, 2016; Alaska Maritime National Wildlife Refuge Islands and Ocean Visitor Center, Homer, Alaska; 5:00–8:00 p.m.
- Thursday, August 18, 2016; Alaska National Guard Armory, Kenai/Soldotna, Alaska; 5:00–8:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823; or Caron McKee, Lease Sale 244 Environmental Coordinator, (907) 334–5200.

Dated: July 8, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–16847 Filed 7–21–16; 8:45 am]

BILLING CODE 3510–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–490 and 731–TA–1204 (Final) (Remand)]

Hardwood Plywood From China

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered remand of its final determinations in the countervailing and antidumping duty investigations of hardwood plywood from China. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: *Effective Date:* July 18, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, or Robin L. Turner (202–205–3103), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record of Investigation Nos. 701–TA–490 and 731–TA–1204 (Final) may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—In November 2013, the Commission determined by an unanimous vote by the five participating Commissioners that an industry in the United States was not materially injured or threatened with material injury by reason of imports of hardwood plywood from China that were sold in the United States at less than fair value and that were subsidized by the Government of China. Petitioners and domestic producers contested the Commission's determinations before the U.S. Court of International Trade ("CIT"). The CIT remanded certain issues to the Commission and affirmed all other aspects of the Commission's determinations. *Coalition of Fair Trade of Hardwood Plywood* v. *United States International Trade Commission,* Slip. Op. 16–57 (Ct. Int'l Trade June 8, 2016).

Participation in the proceeding.—Only those persons who were interested parties that participated in the investigations (*i.e.,* persons listed on the Commission Secretary's service list) and also parties to the appeal may participate in the remand proceedings. Such persons need not make any additional notice of appearances or applications with the Commission to participate in the remand proceedings, unless they are adding new individuals to the list of persons entitled to receive business proprietary information ("BPI") under administrative protective order. BPI referred to during the remand proceedings will be governed, as appropriate, by the administrative protective order issued in the investigations. The Secretary will maintain a service list containing the names and addresses of all persons or their representatives who are parties to the remand proceedings, and the Secretary will maintain a separate list of those authorized to receive BPI under the administrative protective order during the remand proceedings.

Written Submissions.—The Commission is not reopening the record and will not accept the submission of new factual information for the record. The Commission will permit the parties to file comments concerning how the Commission could best comply with the Court's remand instructions.

The comments must be based solely on the information in the Commission's record. The Commission will reject submissions containing additional factual information or arguments pertaining to issues other than those on which the Court has remanded this matter. The deadline for filing comments is August 1, 2016. Comments shall be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material.

Parties are advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

By order of the Commission.

Issued: July 18, 2016.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2016–17286 Filed 7–21–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–443N]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2017

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to establish the 2017 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Electronic comments must be submitted, and written comments must be postmarked, on or before August 22, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2017 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–443N" on all correspondence, including any attachments. The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

Analysis for Proposed 2017 Aggregate Production Quotas and Assessment of Annual Needs

The proposed year 2017 aggregate production quotas and assessment of annual needs represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2017 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

In determining the proposed 2017 aggregate production quotas and assessment of annual needs, the Acting Administrator has taken into account the criteria pursuant to 21 U.S.C. 826(a) and in accordance with 21 CFR 1303.11 (aggregate production quotas for controlled substances) and 21 CFR 1315.11 (assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). The DEA proposes the aggregate production quotas and assessment of annual needs for 2017 by considering: (1) Total net disposal of each class or chemical by all manufacturers and chemical importers during the current and two preceding years; (2) trends in the national rate of net disposal of the class or chemical; (3) total actual (or estimated) inventories of the class or chemical and of all substances manufactured from the class or chemical, and trends in inventory accumulation; (4) projected demand for each class or chemical as indicated by procurement and import quotas requested in accordance with 21 CFR 1303.12, 1315.32, and 1315.34; and (5) other factors affecting medical, scientific, research, and industrial needs of the United States and lawful export requirements, as the Acting Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

Other factors the Acting Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed 2017 assessment of annual needs, the DEA used the calculation methodology previously described in the 2010 and 2011 assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

During the calendar years 2013–2016, the DEA included an additional 25% of the estimated medical, scientific, and research needs for the United States as part of the amount necessary to ensure the establishment and maintenance of reserve stocks for all schedule II aggregate production quotas, and certain schedule I aggregate production quotas (difenoxin, gamma-hydroxybutyric acid, and tetrahydrocannabinols). Based on interagency discussions beginning in November 2015, and after reviewing all relevant quota applications received, published FDA drug shortage lists, and subsequent reports required under 21 U.S.C. 826a for those calendar years, the Acting Administrator has determined that inclusion of the additional 25% of the estimated medical, scientific, and research needs for the United States is unnecessary. Instead, the Acting Administrator determined that 21 U.S.C. 826(c) and 21 U.S.C. 952(a)(2)(A) provide sufficient ability for the DEA to mitigate adverse public effects should a natural disaster or other unforeseen event result in substantial disruption to the amount of controlled substances available for legitimate public need. As such, DEA proposes to remove the additional 25% from the aggregate production quotas. The resulting proposed established aggregate production quotas reflect these reduced amounts.

The Acting Administrator, therefore, proposes to establish the 2017 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2017 quotas (g)
Schedule I	
[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201)	15
1-(1-Phenylcyclohexyl)pyrrolidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200)	35
1-Benzylpiperazine	25

Basic class	Proposed 2017 quotas (g)
1-Butyl-3-(1-naphthoyl)indole (JWH-073)	45
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8)	45
1-Hexyl-3-(1-naphthoyl)indole (JWH-019)	45
1-Methyl-4-phenyl-4-propionoxypiperidine	2
1-Pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678)	35
1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH-203)	30
1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250)	30
1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398)	30
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122)	30
1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19, RCS-4)	30
1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081)	30
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	30
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	25
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	5
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30
3,4,5-Trimethoxyamphetamine	25
3,4-Methylenedioxyamphetamine (MDA)	55
3,4-Methylenedioxymethamphetamine (MDMA)	50
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	40
3,4-Methylenedioxypyrovalerone (MDPV)	35
3-FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	2
3-Methylthiofentanyl	2
4-Bromo-2,5-dimethoxyamphetamine (DOB)	25
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	25
4-FMC; Flephedrone	25
4-Methoxyamphetamine	150
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-MEC; 4-Methyl-N-ethylcathinone	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40
5-Fluoro-UR144, XLR11	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	25
AB-PINACA	15
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
AH-7921	30
Allylprodine	2
alpha-Ethyltryptamine	25
alpha-Methylfentanyl	2
alpha-Methylthiofentanyl	2
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α-PBP)	25
alpha-Pyrrolidinopentiophenone (α-PVP)	25
Alphacetylmethadol	2
Alphameprodine	2
Alphamethadol	2
Aminorex	25
APINCA, AKB48	25
Benzylmorphine	2
beta-Hydroxy-3-methylfentanyl	2
beta-Hydroxyfentanyl	2
beta-Hydroxythiofentanyl	30
Betacetylmethadol	2
Betameprodine	2

Basic class	Proposed 2017 quotas (g)
Betamethadol	4
Betaprodine	2
Bufotenine	3
Butylone	25
Butyryl fentanyl	30
Cathinone	24
Codeine methylbromide	5
Codeine-N-oxide	305
Desomorphine	25
Diethyltryptamine	25
Difenoxin	8,750
Dihydromorphine	1,566,000
Dimethyltryptamine	35
Dipipanone	5
Fenethylline	5
gamma-Hydroxybutyric acid	56,200,000
Heroin	25
Hydromorphinol	2
Hydroxypethidine	2
Ibogaine	5
Lysergic acid diethylamide (LSD)	10
Marihuana	472,000
Mescaline	25
Methaqualone	10
Methcathinone	25
Methyldesorphine	5
Methyldihydromorphine	2
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	350
N,N-Dimethylamphetamine	25
N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA)	50
N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA)	50
N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA)	15
N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl)	100
N-Ethyl-1-phenylcyclohexylamine	5
N-Ethylamphetamine	24
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Naphyrone	25
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	40
Para-fluorofentanyl	5
Parahexyl	5
Pentedrone	25
Pentylone	25
Phenomorphan	2
Pholcodine	5
Psilocybin	30
Psilocyn	50
Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22)	20
Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC)	20
Tetrahydrocannabinols	409,000
Thiofentanyl	2
Tilidine	25
Trimeperidine	2
UR-144	25
Schedule II	
1-Phenylcyclohexylamine	4
1-Piperidinocyclohexanecarbonitrile	4
4-Anilino-N-phenethyl-4-piperidine (ANPP)	1,000,000
Alfentanil	4,200
Alphaprodine	2
Amobarbital	20,100
Amphetamine (for conversion)	9,000,000
Amphetamine (for sale)	37,500,000
Carfentanil	10
Cocaine	94,000
Codeine (for conversion)	40,000,000
Codeine (for sale)	45,000,000

Basic class	Proposed 2017 quotas (g)
Dextropropoxyphene	15
Dihydrocodeine	81,100
Dihydroetorphine	2
Diphenoxylate (for conversion)	15,000
Diphenoxylate (for sale)	820,000
Ecgonine	90,000
Ethylmorphine	2
Etorphine hydrochloride	2
Fentanyl	1,750,000
Glutethimide	2
Hydrocodone (for conversion)	122,000
Hydrocodone (for sale)	58,410,000
Hydromorphone	4,300,000
Isomethadone	4
Levo-alphacetylmethadol (LAAM)	3
Levomethorphan	10
Levorphanol	4,900
Lisdexamfetamine	19,000,000
Meperidine	3,706,000
Meperidine Intermediate-A	5
Meperidine Intermediate-B	9
Meperidine Intermediate-C	5
Metazocine	15
Methadone (for sale)	23,700,000
Methadone Intermediate	25,600,000
Methamphetamine	1,539,100
[900,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 600,000 grams for methamphetamine mostly for conversion to a schedule III product; and 39,100 grams for methamphetamine (for sale)]	
Methylphenidate	73,000,000
Morphine (for conversion)	27,300,000
Morphine (for sale)	41,000,000
Nabilone	15,000
Noroxymorphone (for conversion)	17,700,000
Noroxymorphone (for sale)	400,000
Opium (powder)	90,000
Opium (tincture)	300,000
Oripavine	20,000,000
Oxycodone (for conversion)	2,610,000
Oxycodone (for sale)	108,510,000
Oxymorphone (for conversion)	22,300,000
Oxymorphone (for sale)	4,200,000
Pentobarbital	27,500,000
Phenazocine	5
Phencyclidine	20
Phenmetrazine	2
Phenylacetone	20
Racemethorphan	2
Racemorphan	2
Remifentanil	3,000
Secobarbital	172,002
Sufentanil	4,000
Tapentadol	21,000,000
Thebaine	100,000,000
List I Chemicals	
Ephedrine (for conversion)	50,000
Ephedrine (for sale)	4,100,000
Phenylpropanolamine (for conversion)	15,000,000
Phenylpropanolamine (for sale)	8,500,000
Pseudoephedrine (for sale)	200,000,000

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2017 aggregate production quotas and assessment of annual needs as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing the

2017 aggregate production quota for controlled substances in schedules I and II and establishing an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, 21 CFR 1303.11(c) and 1315.11(f).

Dated: July 14, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17370 Filed 7–21–16; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mikhayl Soliman, M.D.: Decision and Order

On March 27, 2015, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mikhayl Soliman, M.D. (hereinafter, Applicant), of both Wayne, Michigan and Los Angeles, California. The Show Cause Order proposed the denial of Applicant's applications for DEA Certificates of Registration in the States of Michigan and California on multiple grounds. GX 7, at 1.

First, the Show Cause Order alleged that Applicant had previously been registered to handle controlled substances in only Schedule III and IIIN, at the registered address of 3152 South Wayne Road, Wayne, Michigan. *Id.* The Show Cause Order alleged that on September 14, 2012, Applicant was issued an Order to Show Cause and Immediate Suspension of Registration and that he subsequently voluntarily surrendered his registration.

The Show Cause Order alleged that on September 24, 2012, Applicant applied for a new DEA practitioner's registration at his previous registered location in Wayne, Michigan, and that on October 2, 2012, he applied for a new practitioner's registration at a proposed location in Los Angeles, California. *Id.* The Order then alleged that on both applications, Applicant had failed to disclose that he had voluntarily surrendered his registration and had materially falsified both applications. *Id.* at 1–2 (citing 21 U.S.C. 843(a)(4)(A)).

Second, the Show Cause Order alleged that as a result of actions taken by the medical boards of California and Michigan, Applicant is "without authority to practice in the States . . . in which [he] applied for" DEA registrations. *Id.* at 2. Specifically, the Show Cause Order alleged that on January 15, 2014, the Michigan Board of Medicine issued a Consent Order which found that he "had prescribed controlled substances . . . in a manner which demonstrated negligence, incompetence, and a lack of good moral character" and that he "prescribed, gave away or administered drugs for other than lawful diagnostic or therapeutic purposes." *Id.* The Order also alleged that the Michigan Board had suspended his medical license for six months and one day and required that he petition the Board for reinstatement; the Order then alleged that Applicant's Michigan medical license remains suspended. *Id.* The Order further alleged that based on the Michigan Board's findings, the Medical Board of California revoked his California license effective October 10, 2014. *Id.*

Finally, the Show Cause Order alleged that on May 16, 2012, DEA Investigators had seized 323 patient files which Applicant had discarded in the trash at his residence, and that the files showed that Applicant had prescribed both hydrocodone (then a Schedule III controlled substance) and alprazolam (a Schedule IV drug) "to the majority of these patients." *Id.* The Order then alleged that DEA Investigators obtained information from the Michigan Automated Prescriptions System which showed that "between January 1, 2007 and August 20, 1012, [Applicant] prescribed at least 19,409 dosage units of [s]chedule II [drugs], 725,760 dosage units of [s]chedule IV [drugs], and 246,397 dosage units of [s]chedule V [drugs], without the registered authority to do so." *Id.*[1]

Thereafter, the Government attempted to serve the Show Cause Order by FedEx delivered to the proposed business address Applicant used when he applied for a registration in Los Angeles. GX 9, at 1. The Government did not, however, require a signature. *Id.* at 1–2. Moreover, the Government does not point to any precedent of either the courts or this Agency which allows for the use of FedEx to serve a charging document or complaint (as opposed to post-service filings) on a person.[2] Thus, this attempt was deemed inadequate to accomplish service.

The Government also noted that it emailed a lawyer who was representing Applicant "in a pending criminal matter" and asked him if he could confirm Applicant's current address or accept service on Applicant's behalf. GX 10. The lawyer, however, did not respond. Request for Final Agency Action, at 3. Moreover, according to the Government, a Supervisory Diversion Investigator phoned the attorney and asked for Applicant's address in order to serve the Show Cause Order. *Id.* According to the Government, while the attorney stated that he would contact the Government's counsel, he did not.[3] *Id.*

The Government then mailed the Show Cause Order by certified mail, return receipt requested, addressed to Applicant at his proposed business address in Wayne, Michigan. GX 11, 12, and 13. Several weeks later the mailing was returned unclaimed, with the Post Office indicating that it was "unable to forward" the mailing. GX 13. The Government did not, however, send the Show Cause Order to Applicant by First Class Mail. *See Jones* v. *Flowers,* 547 U.S. 220 (2006).

Subsequently, the Government submitted a Request for Final Agency Action along with the Investigative File. Upon review of the record, I found that service was inadequate and directed that the Request for Final Agency Action be returned.

On November 9, 2015, the Government again mailed the Show Cause Order by certified mail, return receipt requested, addressed to Applicant at his proposed registered location. Here again, several weeks later the mailing was returned by the Post Office as undeliverable. GX 18.

Also on November 9, 2015, the same day the Government had re-mailed the Show Cause Order, it emailed the Order to Applicant at the email address he had provided to the Agency on his applications. According to an affidavit submitted by the Government, it "did not receive any bounce-back email or other indication that the email . . . was undeliverable or otherwise not received." GX 19.

Upon re-submission of its Request for Final Agency Action, the Government advised that on September 24, 2015, Applicant was found guilty in the United States District Court for the Eastern District of Michigan on multiple counts of health care fraud and aiding and abetting the unlawful distribution of controlled substances. Request for Final Agency Action, at 4; *see also* GX 15, at 5). The Government further advised that on October 5, 2015,

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[1] The Show Cause Order also notified Applicant of his right to either request a hearing on the allegations of the Order to Show Cause or to submit a written statement while waiving his right to a hearing, the procedure for electing either option, and the consequence of failing to elect either option. GX 7, at 3.

[2] Nor am I aware of any rules of procedure which allow for a charging document or complaint to be served in this manner.

[3] Given that Applicant had been criminally charged and released on bond, the Pre-Trial Services Office would likely have been a more fruitful source for obtaining his residence address.

Applicant failed to appear for a bond hearing leading the District Court to issue a bench warrant for his arrest.

Based on the above, I find that the Government has satisfied its obligation under the Due Process Clause "to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones,* 547 U.S. at 226 (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). Due process does not, however, require actual notice, *Jones,* 547 U.S. at 226 (quoting *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002)), but rather, only "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Id.* (quoting *Mullane,* 339 U.S. at 314). Moreover, the Government is not required to undertake "heroic efforts" to find an applicant. *Dusenbery,* 534 U.S. at 170 (2002).

Here, I conclude that Applicant's secreting himself rendered the Government's use of the traditional means of service futile, and that therefore, the Government was entitled to attempt to serve the Show Cause Order by emailing it to him at the email address he had previously provided to the Agency. *See Rio Properties, Inc.* v. *Rio Int'l Interlink,* 284 F.3d 1007, 1017–18 (9th Cir. 2002); *see also Snyder, et al.* v. *Alternate Energy Inc.,* 857 N.Y.S. 2d 442, 447–449 (N.Y. Civ. Ct. 2008); *In re International Telemedia Associates, Inc.,* 245 B.R. 713, 721–22 (Bankr. N.D. Ga. 2000).

To be sure, courts have recognized that the use of email to serve process has "its limitations," including that "[i]n most instances, there is no way to confirm receipt of an email message." *Rio Properties,* 284 F.3d at 1018. Here, however, I conclude that the use of email to serve Applicant satisfied due process because service was made to an email address he had previously provided to the Agency and the Government did not receive back either an error or undeliverable message. *See Richard C. Quigley, D.O.,* 79 FR 50945 (2014); *Emilio Luna, M.D.,* 77 FR 4829 (2012), *see also Robert Leigh Kale,* 76 FR 48898, 48899–900 (2011). Thus, I am satisfied that the Government has provided Applicant with notice "reasonably calculated . . . to apprise [him] of the pendency of the action" and to present his objections.[4] *Jones,* 547 U.S. at 226 (quoting *Mullane,* 339 U.S. at 314).

Having found that the service of the Show Cause Order was constitutionally adequate, I turn to whether Applicant has waived his right to a hearing or to submit a written statement in lieu of a hearing. According to the Government, since the re-service of the Show Cause Order, neither Applicant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement of position. Accordingly, as more than 30 days have now passed since the date of service, I find that Applicant has waived his right to a hearing or to submit a written statement. 21 CFR 1301.43(d). I therefore issue this Decision and Final Order based on relevant evidence contained in the Investigative Record submitted by the Government. *Id.* 1301.43(d) & (e). I make the following additional findings of fact.

Findings of Fact

Applicant previously held DEA Certificate of Registration BS9471309, pursuant to which he was authorized to dispense controlled substances in Schedules III and IIIN, at the registered address of Soliman Medical Center, 3152 South Wayne Road, Wayne, Michigan. GX 2, at 1. However, on September 14, 2012, the former Administrator issued an Order to Show Cause and Immediate Suspension of Registration to Applicant, based on allegations that he was prescribing controlled substances in Schedules II, IV, and V, for which he lacked authority, and that he also issued prescriptions for drug cocktails of hydrocodone (then Schedule III) and alprazolam (Schedule IV) which lacked a legitimate medical purpose. GX 3, at 1–2. The former Administrator also noted that of the 323 patient files DEA Investigators found in his trash, 143 of the patients had "criminal histories involving controlled substance violations." *Id.* at 2. The same day, Applicant voluntarily surrendered his registration "in view of [his] alleged failure to comply with the Federal requirements pertaining to controlled substances." GX 4, at 1.

Four days later, on September 21, 2012, Applicant submitted an application for a new registration as a practitioner in Schedules IIN, III, IIIN and IV at the registered address of 3152 South Wayne Road, Wayne, Michigan. The DEA Chief of Registration certified that on his application, Applicant answered "No" to question 3, which asks: "[h]as the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" GX 1, at 1, 3. This application remains pending before the Agency. *Id.* at 1.

On October 1, 2012, Applicant submitted a second application for registration as a practitioner in Schedules III, IIIN, IV, and V, at the registered address of 3844 Wasatch Ave #4, Los Angeles, California. GX 8. The DEA Chief of Registration certified that on his application, Applicant answered "No" to the question, "Has the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" GX 8, at 2, 4.

On February 25, 2013, the Michigan Board of Medicine's Disciplinary Subcommittee filed an Administrative Complaint against Applicant. GX 5, at 13. Based on a review of 20 patient charts, the Board alleged that his charting was lacking:

> (1) "information pertaining to past medical history or current treating clinicians";
>
> (2) "any findings pertaining to pain assessment, level of dysfunction from pain, treatment plan, or diagnostic testing";
>
> (3) "any documentation pertaining to patient informed consents, prescribing agreements, pain assessments, clinical documentation, drug analysis screens, lab test results, patient risk assessments, copies of previous medical records, or the implementation of a pain management program"; and
>
> (4) "any documentation that [he] monitored the patients' use of the controlled substances for drug dependency or diversion, or that he verified the efficacy of the long term use of the controlled substances in treating the diagnoses of the patients."

Id. at 10–11. The Board also alleged that the charts "lack[ed] documentation that [he] counselled the patients about the risk associated with being prescribed a combination of hydrocodone and alprazolam, or the long term effects of continued consumption of acetaminophen." *Id.* Based on its findings, the Board alleged that Applicant had violated various provisions of Michigan law, and had engaged in "selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes." *Id.* at 12 (quoting Mich. Comp. Laws section 162221(c)(iv)).

On January 15, 2014, Applicant stipulated with the Board to the entry of a Consent Order, pursuant to which his medical license was suspended for six months and one day, effective February

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[4] Because Applicant is a fugitive, I need not decide whether the Government could have satisfied its constitutional obligation by simply re-mailing the Show Cause Order to him by regular first class mail as the Supreme Court's decision in *Jones* v. *Flowers* suggests. *Jones,* 547 U.S. at 234–35.

15, 2014.[5] GX 5, at 1–3. However, the Consent Order also provided that the reinstatement of Applicant's medical license "is not automatic and that he will have to petition for reinstatement" and show that he is of "good moral character," that he has "the ability to practice . . . with reasonable skill and safety," that he has satisfied "the guidelines on reinstatement," and that the reinstatement of his license "is in the public interest." *Id.* at 2. *See also* M.C.L.A. 333.16221.

To date, Applicant has not been reinstated. I therefore find that Applicant is currently without authority to dispense controlled substances in Michigan, one of the States in which he seeks registration.

Applicant also formerly held a Physician's and Surgeon's Certificate issued by the Medical Board of California. However, on October 10, 2014, the Medical Board revoked his Physician's and Surgeon's Certificate based on the Michigan Board of Medicine's suspension of his Michigan medical license.

In its Request for Final Agency Action, the Government notes that the Order to Show Cause also sought to deny Applicant's application for a DEA registration in California on the basis that the California Medical Board had revoked his medical license. Request for Final Agency Action, at 2 n.1. The Government, however, now advises that "subsequent to the issuance of the [Show Cause Order], the undersigned counsel learned that the . . . Los Angeles Field Division . . . withdrew [Applicant]'s application pursuant to 21 CFR 1301.16(b), which provides that 'failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.' " *Id.* (quoting 21 CFR 1301.16(b)). The Government further explains that in December 2014, the Los Angeles Field Division "attempted to reach [Applicant] via certified mail at his application addresses in California and Michigan, [but] the certified letters were returned as unclaimed and undeliverable, and consequently, [his] application for a DEA Registration in California was 'deemed' a withdrawal and terminated in the registration database." *Id.* at 2–3.

The Agency's registration records (of which I take official notice, *see* 5 U.S.C. 556(e)), show that on December 5, 2014, Applicant was sent a letter requesting that he provide a valid California Medical Board license number in order to process his pending application for registration. According to the affidavit of the then-chief of the Agency's registration unit, on February 27, 2015, Applicant's October 1, 2012, application for his proposed Los Angeles, California address was deemed "withdrawn and retired from the DEA computer system." GX 8, at 1.

Discussion

Pursuant to section 303(f) of the Controlled Substances Act, "[t]he Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(f). Section 303(f) further provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration . . . would be inconsistent with the public interest." *Id.* In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The Applicant's experience in dispensing . . . controlled substances.

(3) The Applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. *Id.*

"These factors are . . . considered in the disjunctive." *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem[ ] appropriate in determining whether . . . an application for registration [should be] denied." *Id.* Moreover, while I am required to consider each of the factors, I "need not make explicit findings as to each one." *MacKay* v. *DEA*, 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman*, 567 F.3d 215, 222 (6th Cir. 2009) (quoting *Hoxie*, 419 F.3d 477, 482 (6th Cir. 2005))).[6]

In this case, I conclude that the record supports two independent grounds for denying Applicant's application for a DEA registration. First, Applicant does not possess authority under the laws of Michigan, the State in which he seeks registration with the Agency. Second, Applicant materially falsified his application for a DEA registration.

Applicant's Lack of State Authority

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in "the jurisdiction in which he practices" in order to obtain a DEA registration. *See* 21 U.S.C. 823(f) ("The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices."). *See also* 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice"). Moreover, the CSA authorizes the revocation of a registration "upon a finding that the registrant . . . has had his State license or registration suspended [or] revoked . . . and is no longer authorized by State law to engage in the . . . distribution [or] dispensing of controlled substances." *Id.* section 824(a)(3). As the Supreme Court has explained, "[i]n the case of a physician, this scheme contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice." *United States* v. *Moore*, 423 U.S. 122, 140–41 (1975).

Based on these provisions, DEA has long and repeatedly held that the possession of state authority is a prerequisite for obtaining and maintaining a practitioner's registration. *See Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978) ("State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration."). *See also Sheran Arden Yeates*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci*, 58 FR 51104, 51105 (1993); *Bobby Watts*, 53 FR 11919, 11920 (1988).

Here, the investigative file establishes that the Michigan Board suspended applicant's medical license on February 15, 2014. Moreover, as found above, Applicant's Michigan medical license remains suspended as of the date of this Decision and Order. I therefore find that Applicant is without authority to dispense controlled substances in

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[5] Applicant was not required to admit that the allegations were true. GX 5, at 3.

[6] "In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the [applicant]. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the [applicant's] misconduct." *Jayam Krishna-Iyer*, 74 FR 459, 462 (2009).

Michigan, the State in which he seeks registration. Because he does not meet this prerequisite for obtaining a DEA registration, I will deny his application on this basis.

Material Falsification

Pursuant to section 304(a)(1), the Attorney General is also authorized to suspend or revoke a registration "upon a finding that the registrant . . . has materially falsified any application filed pursuant to or required by this subchapter." 21 U.S.C. 824(a)(1). It is well established that the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See The Lawsons, Inc.*, 72 FR 74334, 74337 (2007); *Anthony D. Funches*, 64 FR 14267, 14268 (1999); *Alan R. Schankman*, 63 FR 45260 (1998); *Kuen H. Chen*, 58 FR 65401, 65402 (1993).

Thus, the allegation that Applicant materially falsified his application is properly considered in this proceeding. *See Samuel S. Jackson*, 72 FR 23848, 23852 (2007). Moreover, just as materially falsifying an application provides a basis for revoking an existing registration without proof of any other misconduct, *see* 21 U.S.C. 824(a)(1), it also provides an independent and adequate ground for denying an application. *The Lawsons*, 72 FR 74338; *cf. Bobby Watts, M.D.*, 58 FR 46995 (1993).

Here, the Government's evidence shows that upon being served with an Order to Show Cause and Immediate Suspension of Registration which alleged that he had prescribed controlled substances in violation of the CSA, Applicant surrendered his registration. GXs 3 & 4. Moreover, on the Voluntary Surrender form, Applicant acknowledged that he was doing so "[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances." GX 4. Yet days later, Applicant applied for a new registration and provided a "no" answer to the question: "[h]as the applicant ever surrendered (for cause) or had a federal controlled substance registration revoked, suspended, restricted or denied, or is any such action pending?" GX 1, at 1, 3.

Applicant's answer was false as he had clearly surrendered his registration for cause. His false answer was also material as "it 'ha[d] a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body to which it was addressed." *Kungys* v. *United States*, 485 U.S. 759, 770 (1988) (quoting *Weinstock* v. *United States*, 231 F.2d 699, 701 (D.C. Cir. 1956)) (other citation omitted); see also *United States* v. *Wells*, 519 U.S. 482, 489 (1997) (quoting *Kungys*, 485 U.S. at 770). As the Supreme Court has further explained, "it has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation, but rather, whether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a natural tendency to affect, the official decision." *Kungys*, 485 U.S. at 771. While the evidence must be "clear, unequivocal, and convincing," the "ultimate finding of materiality turns on an interpretation of the substantive law." *Id.* at 772 (int. quotations and citations omitted).

Applicant's false answer to the question of whether he had ever surrendered his federal registration was clearly "capable of affecting" the decision of whether to grant his application. As the evidence shows, Applicant surrendered his registration in response to allegations that he violated the CSA and DEA regulations by prescribing controlled substances that were in schedules for which he lacked authorization, as well as allegations that he issued prescriptions that lacked a legitimate medical purpose. GX 3, at 2 (Sept. 24, 2012 Immediate Suspension Order) (citing 21 U.S.C. 822(b) and 841(a)(1); 21 CFR 1301.12(a) and 1306.04(a)). Notably, under the public interest standard, the Agency is required to consider both the Applicant's "experience in dispensing . . . controlled substances" and his "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances." 21 U.S.C. 823(f)(2) & (4). *See also Shannon L. Gallentine, D.P.M.*, 76 FR 45864, 45866 (2011).

Thus, notwithstanding that the Agency did not grant his application, his false answer was still material as it was capable of influencing the decision as to whether to grant his application. *See United States* v. *Alemany Rivera*, 781 F.2d 229, 234 (1st Cir. 1985) ("It makes no difference that a specific falsification did not exert influence so long as it had the capacity to do so."); *United States* v. *Norris*, 749 F.2d 1116, 1121 (4th Cir. 1984) ("There is no requirement that the false statement influence or effect the decision making process of a department of the United States Government."). Accordingly, I conclude that Applicant materially falsified his September 2012 application for registration. This provides a further reason to deny his pending application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Mikhayl Soliman, M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: July 15, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17394 Filed 7–21–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–420P]

Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2016

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to adjust the 2016 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.13(c) and 1315.13(d). Electronic comments must be submitted, and written comments must be postmarked, on or before August 22, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in his sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the

Federal Register a final order establishing the 2016 adjusted aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–420P" on all correspondence, including any attachments. The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

Legal Authority and Background

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the DEA pursuant to 28 CFR 0.100.

The DEA established the 2016 aggregate production quotas for substances in schedules I and II and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine on October 6, 2015 (80 FR 60400). That notice stipulated that, in accordance with 21 CFR 1303.13 and 1315.13, all aggregate production quotas and assessments of annual need are subject to adjustment.

Analysis for Proposed Adjusted 2016 Aggregate Production Quotas and Assessment of Annual Needs

The DEA proposes to adjust the established 2016 aggregate production quotas and assessment of annual needs for certain schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2016 to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed adjustment, the Acting Administrator has taken into account the criteria in accordance with 21 CFR 1303.13 (adjustment of aggregate production quotas for controlled substances) and 21 CFR 1315.13 (adjustment of the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine). The DEA determined whether to propose an adjustment of the aggregate production quotas and assessment of annual needs for 2016 by considering: (1) Changes in the demand for that class or chemical, changes in the national rate of net disposal of the class or chemical, and changes in the rate of net disposal of the class or chemical by registrants holding individual manufacturing quotas for the class; (2) whether any increased demand for that class or chemical, the national and/or individual rates of net disposal of that class or chemical are temporary, short term, or long term; (3) whether any increased demand for that class or chemical can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the aggregate production quota; (4) whether any decreased demand for that class or chemical will result in excessive inventory accumulation by all persons registered to handle that class or chemical; and (5) other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Acting Administrator finds relevant. These quotas do not include imports of controlled substances for use in industrial processes.

The Acting Administrator also considered updated information obtained from 2015 year-end inventories, 2015 disposition data submitted by quota applicants, estimates of the medical needs of the United States, product development, and other information made available to the DEA after the initial aggregate production quotas and assessment of annual needs had been established. Other factors the Acting Administrator considered in calculating the aggregate production quotas, but not the assessment of annual needs, include product development requirements of both bulk and finished dosage form manufacturers, and other pertinent information. In determining the proposed adjusted 2016 assessment of annual needs, the DEA used the calculation methodology previously described in the 2010 and 2011 established assessment of annual needs (74 FR 60294, Nov. 20, 2009, and 75 FR 79407, Dec. 20, 2010, respectively).

As described in the previously published notice establishing the 2016 aggregate production quotas and assessment of annual needs, the DEA has specifically considered that inventory allowances granted to individual manufacturers, 21 CFR 1303.24, may not always result in the availability of sufficient quantities to maintain an adequate reserve stock pursuant to 21 U.S.C. 826(a), as intended. This would be concerning if a natural disaster or other unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need. As such, the DEA has included in all proposed adjusted schedule II controlled substance aggregate production quotas, and certain proposed adjusted schedule I controlled substance aggregate production quotas, an additional 25% of the estimated medical, scientific, and research needs as part of the amount necessary to ensure the establishment and maintenance of reserve stocks. The resulting adjusted established aggregate production quotas will reflect these included amounts. This action will not affect the ability of manufacturers to maintain inventory allowances as specified by regulation. The DEA expects that maintaining this reserve in certain established aggregate production quotas will mitigate adverse public effects if an unforeseen event resulted in substantial disruption to the amount of controlled substances available to provide for legitimate public need, as determined by the DEA. The DEA does not anticipate utilizing the reserve in the absence of these circumstances.

The Acting Administrator, therefore, proposes that the year 2016 aggregate production quotas for the two temporarily scheduled substances be established, and to adjust the 2016 aggregate production quotas for certain schedule I and II controlled substances and assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Established 2016 quotas	Proposed revised 2016 quotas
	(g)	(g)
Temporarily Scheduled Substances		
beta-Hydroxythiofentanyl	N/A	30.
Butyryl fentanyl	N/A	30.
Schedule I		
[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ–2201)	15	no change.
1-(1-Phenylcyclohexyl)pyrrolidine	10	no change.
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	45	no change.
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	45	no change.
1-[1-(2-Thienyl)cyclohexyl]piperidine	15	no change.
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)	45	no change.
1-Benzylpiperazine	25	no change.
1-Butyl-3-(1-naphthoyl)indole (JWH–073)	45	no change.
1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR–18 and RCS–8)	45	no change.
1-Hexyl-3-(1-naphthoyl)indole (JWH–019)	45	no change.
1-Methyl-4-phenyl-4-propionoxypiperidine	2	no change.
1-Pentyl-3-(1-naphthoyl)indole (JWH–018 and AM678)	45	no change.
1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH–203)	45	no change.
1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH–250)	45	no change.
1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH–398)	45	no change.
1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH–122)	45	no change.
1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR–19, RCS–4)	45	no change.
1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH–081)	45	no change.
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)	30	no change.
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)	30	no change.
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)	30	no change.
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C–P)	30	no change.
2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)	30	no change.
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B–NBOMe; 2C–B–NBOMe; 25B; Cimbi-36).	25	no change.
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)	30	no change.
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C–NBOMe; 2C–C–NBOMe; 25C; Cimbi-82).	25	no change.
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)	30	no change.
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I–NBOMe; 2C–I–NBOMe; 25I; Cimbi-5).	15	no change.
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25	no change.
2,5-Dimethoxy-4-n-propylthiophenethylamine	25	no change.
2,5-Dimethoxyamphetamine	25	no change.

Basic class	Established 2016 quotas	Proposed revised 2016 quotas
	(g)	(g)
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)	30	no change.
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)	30	no change.
3,4,5-Trimethoxyamphetamine	25	no change.
3,4-Methylenedioxyamphetamine (MDA)	55	no change.
3,4-Methylenedioxymethamphetamine (MDMA)	50	no change.
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40	no change.
3,4-Methylenedioxy-N-methylcathinone (methylone)	50	no change.
3,4-Methylenedioxypyrovalerone (MDPV)	35	no change.
3–FMC; 3-Fluoro-N-methylcathinone	25	no change.
3-Methylfentanyl	2	no change.
3-Methylthiofentanyl	2	no change.
4-Bromo-2,5-dimethoxyamphetamine (DOB)	25	no change.
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	25	no change.
4–FMC; Flephedrone	25	no change.
4-Methoxyamphetamine	150	no change.
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25	no change.
4-Methylaminorex	25	no change.
4–MEC; 4-Methyl-N-ethylcathinone	25	no change.
4-Methyl-N-methylcathinone (mephedrone)	45	no change.
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25	no change.
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	68	50.
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP–47,497 C8-homolog).	53	40.
5-Fluoro-UR144, XLR11	25	no change.
5-Methoxy-3,4-methylenedioxyamphetamine	25	no change.
5-Methoxy-N,N-diisopropyltryptamine	25	no change.
5-Methoxy-N,N-dimethyltryptamine	25	no change.
AB–PINACA	15	no change.
Acetyl-*alpha*-methylfentanyl	2	no change.
Acetyldihydrocodeine	2	no change.
Acetylmethadol	2	no change.
AH–7921	N/A	30.
Allylprodine	2	no change.
alpha-Ethyltryptamine	25	no change.
alpha-Methylfentanyl	2	no change.
alpha-Methylthiofentanyl	2	no change.
alpha-Methyltryptamine (AMT)	25	no change.
alpha-Pyrrolidinobutiophenone (α-PBP)	25	no change.
alpha-Pyrrolidinopentiophenone (α-PVP)	25	no change.
Alphacetylmethadol	2	no change.
Alphameprodine	2	no change.
Alphamethadol	2	no change.
Aminorex	25	no change.
APINCA, AKB48	25	no change.
Benzylmorphine	2	no change.
beta-Hydroxy-3-methylfentanyl	2	no change.
beta-Hydroxyfentanyl	2	no change.
Betacetylmethadol	2	no change.
Betameprodine	2	no change.
Betamethadol	4	no change.
Betaprodine	2	no change.
Bufotenine	3	no change.
Butylone	25	no change.
Cathinone	70	30.
Codeine methylbromide	5	no change.
Codeine-N-oxide	305	no change.
Desomorphine	25	no change.
Diethyltryptamine	25	no change.
Difenoxin	11,000	no change.
Dihydromorphine	3,000,000	2,000,000.
Dimethyltryptamine	35	no change.
Dipipanone	5	no change.
Fenethylline	5	no change.
gamma-Hydroxybutyric acid	70,250,000	no change.
Heroin	50	no change.
Hydromorphinol	2	no change.
Hydroxypethidine	2	no change.
Ibogaine	5	no change.
Lysergic acid diethylamide (LSD)	40	no change.
Marihuana	658,000	no change.

Basic class	Established 2016 quotas	Proposed revised 2016 quotas
	(g)	(g)
Mescaline	25	no change.
Methaqualone	10	no change.
Methcathinone	25	no change.
Methyldesorphine	5	no change.
Methyldihydromorphine	2	no change.
Morphine methylbromide	5	no change.
Morphine methylsulfonate	5	no change.
Morphine-N-oxide	350	no change.
N,N-Dimethylamphetamine	25	no change.
N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB–PINACA)	50	no change.
N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB–FUBINACA)	50	no change.
N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB–CHMINACA)	15	no change.
N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl)	100	no change.
N-Ethyl-1-phenylcyclohexylamine	5	no change.
N-Ethylamphetamine	24	no change.
N-Hydroxy-3,4-methylenedioxyamphetamine	24	no change.
Naphyrone	25	no change.
Noracymethadol	2	no change.
Norlevorphanol	52	no change.
Normethadone	2	no change.
Normorphine	40	no change.
Para-fluorofentanyl	5	no change.
Parahexyl	5	no change.
Pentedrone	25	no change.
Pentylone	25	no change.
Phenomorphan	2	no change.
Pholcodine	5	no change.
Psilocybin	30	no change.
Psilocyn	50	no change.
Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB–22; 5F–PB–22)	50	25.
Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB–22; QUPIC)	50	25.
Tetrahydrocannabinols	511,250	no change.
Thiofentanyl	2	no change.
Tilidine	25	no change.
Trimeperidine	2	no change.
UR–144	25	no change.
Schedule II		
1-Phenylcyclohexylamine	5	no change.
1-Piperidinocyclohexanecarbonitrile	5	no change.
4-Anilino-N-phenethyl-4-piperidine (ANPP)	2,950,000	2,250,000.
Alfentanil	17,750	no change.
Alphaprodine	3	no change.
Amobarbital	25,125	no change.
Amphetamine (for conversion)	15,000,000	no change.
Amphetamine (for sale)	39,705,000	45,000,000.
Carfentanil	19	no change.
Cocaine	200,000	no change.
Codeine (for conversion)	50,000,000	no change.
Codeine (for sale)	63,900,000	no change.
Dextropropoxyphene	19	no change.
Dihydrocodeine	226,375	no change.
Dihydroetorphine	3	no change.
Diphenoxylate (for conversion)	31,250	18,750.
Diphenoxylate (for sale)	1,337,500	no change.
Ecgonine	125,000	no change.
Ethylmorphine	3	5.
Etorphine hydrochloride	3	no change.
Fentanyl	2,300,000	no change.
Glutethimide	3	no change.
Hydrocodone (for conversion)	235,000	177,500.
Hydrocodone (for sale)	88,500,000	86,000,000.
Hydromorphone	8,250,000	7,000,000.
Isomethadone	5	no change.
Levo-alphacetylmethadol (LAAM)	4	no change.
Levomethorphan	30	33.
Levorphanol	7,125	no change.
Lisdexamfetamine	29,750,000	23,750,000.
Meperidine	5,450,000	4,632,500.
Meperidine Intermediate-A	6	no change.

Basic class	Established 2016 quotas	Proposed revised 2016 quotas
	(g)	(g)
Meperidine Intermediate-B	11	no change.
Meperidine Intermediate-C	6	no change.
Metazocine	19	no change.
Methadone (for sale)	31,875,000	no change.
Methadone Intermediate	34,375,000	no change.
Methamphetamine	2,061,375	no change.
[1,250,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 750,000 grams for methamphetamine mostly for conversion to a schedule III product; and 61,375 grams for methamphetamine (for sale)]		
Methylphenidate	96,750,000	84,375,000.
Morphine (for conversion)	91,250,000	no change.
Morphine (for sale)	62,500,000	no change.
Nabilone	18,750	no change.
Noroxymorphone (for conversion)	17,500,000	no change.
Noroxymorphone (for sale)	1,475,000	625,000.
Opium (powder)	112,500	no change.
Opium (tincture)	687,500	375,000.
Oripavine	30,000,000	no change.
Oxycodone (for conversion)	6,250,000	5,000,000.
Oxycodone (for sale)	139,150,000	no change.
Oxymorphone (for conversion)	29,000,000	25,000,000.
Oxymorphone (for sale)	7,750,000	6,250,000.
Pentobarbital	38,125,000	no change.
Phenazocine	6	no change.
Phencyclidine	50	no change.
Phenmetrazine	3	no change.
Phenylacetone	50	no change.
Racemethorphan	3	5.
Racemorphan	3	no change.
Remifentanil	3,750	no change.
Secobarbital	215,003	no change.
Sufentanil	6,255	no change.
Tapentadol	25,500,000	no change.
Thebaine	125,000,000	no change.
List I Chemicals		
Ephedrine (for conversion)	100,000	50,000.
Ephedrine (for sale)	4,000,000	no change.
Phenylpropanolamine (for conversion)	22,400,000	15,000,000.
Phenylpropanolamine (for sale)	8,500,000	no change.
Pseudoephedrine (for conversion)	7,000	40.
Pseudoephedrine (for sale)	224,500,000	200,000,000.

The Acting Administrator further proposes that aggregate production quotas for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2016 aggregate production quotas and assessment of annual needs as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Acting Administrator will issue and publish in the **Federal Register** a final order establishing any adjustment of 2016 aggregate production quota for each basic class of controlled substances in schedules I and II and established assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, 21 CFR 1303.13(c) and 1315.13(f).

Dated: July 14, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–17371 Filed 7–21–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Charter Renewal

AGENCY: Justice Department.

ACTION: Notice of Charter Renewal of the Executive Advisory Board of the National Domestic Communications Assistance Center.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, title 5, United States Code, Appendix, and title 41 of the U.S. Code of Federal Regulations, section 101–6.1015, notice is hereby given that the Charter of the National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB) has been renewed. The Charter is on file with the General Services Administration. The Attorney General determined that the NDCAC EAB is in the public interest and is necessary in connection with the performance of duties of the United States Department of Justice. These duties can best be performed through the advice and counsel of this group.

The purpose of the EAB is to provide advice and recommendations to the

Attorney General or designee, and to the Director of the NDCAC that promote public safety and national security by advancing the NDCAC's core functions: law enforcement coordination with respect to technical capabilities and solutions, technology sharing, industry relations, and implementation of the Communications Assistance for Law Enforcement Act (CALEA). The EAB consists of 15 voting members from Federal, State, local and tribal law enforcement agencies. Additionally, there are two non-voting members as follows: a federally-employed attorney assigned full time to the NDCAC to serve as a legal advisor to the EAB, and the DOJ Chief Privacy Officer or designee to ensure that privacy and civil rights and civil liberties issues are fully considered in the EAB's recommendations. The EAB is composed of eight State, local, and/or tribal representatives and seven federal representatives.

The EAB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Alice Bardney-Boose,

Designated Federal Officer, National Domestic Communication Assistance Center, Executive Advisory Board.

[FR Doc. 2016–17418 Filed 7–21–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On July 18, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Texas in *United States, et al.* v *Tesoro Refining & Marketing Co. LLC et al.* Civil Action No. SA–16–cv–00722.

The Consent Decree settles claims brought by the United States, states of Alaska and Hawaii, and the Northwest Clean Air Agency against Tesoro Refining & Marketing Co. LLC, Tesoro Alaska Co. LLC, Tesoro Logistics L.P., and Par Hawaii Refining, LLC for violations of the Clean Air Act, federal regulations promulgated thereunder, and various state regulations and permits at six petroleum refineries located in Kenai, Alaska; Martinez, California; Kapolei, Hawaii; Mandan, North Dakota; Salt Lake City, Utah; and Anacortes, Washington. Under the Consent Decree, Defendants will undertake extensive measures to correct the alleged violations, pay a civil penalty of $10,450 to the United States and state co-plaintiffs, and perform three projects to mitigate excess emissions associated with the violations.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Tesoro Refining & Marketing Co. LLC et al.,* D.J. Ref. No. 90–5–2–1–09512/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $59.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–17393 Filed 7–21–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1718]

Webinar Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of webinar meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has scheduled a webinar meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: The webinar meeting will take place online on Tuesday, August 2, 2016, at 1:00 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Jeff Slowikowski, Designated Federal Official, OJJDP, *Jeff.Slowikowski@usdoj.gov* or (202) 616–3646. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: FACJJ, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.org.*

Meeting Agenda: The proposed agenda includes: (a) Opening Introductions, and Webinar Logistics; (b) Remarks of Robert L. Listenbee, Administrator, OJJDP; (c) FACJJ Subcommittee Reports (Legislation; Expungement/Sealing of Juvenile Court Records; Research/Publications; LGBT); (d) FACJJ Administrative Business; and (e) Summary, Next Steps, and Meeting Adjournment.

To participate in or view the webinar meeting, FACJJ members and the public must pre-register online. Members and interested persons must link to the webinar registration portal through *www.facjj.org,* no later than Wednesday, July 27, 2016. Upon registration, information will be sent to you at the email address you provide to enable you to connect to the webinar. Should problems arise with webinar registration, please call Callie Long Murray at 571–308–6617. [This is not a toll-free telephone number.] Note: Members of the public will be able to listen to and view the webinar as observers, but will not be able to participate actively in the webinar.

An on-site room is available for members of the public interested in viewing the webinar in person. If members of the public wish to view the webinar in person, they must notify Melissa Kanaya by email message at

Melissa.Kanaya@usdoj.gov no later than Friday, July 29, 2016.

FACJJ members will not be physically present in Washington, DC for the webinar. They will participate in the webinar from their respective home jurisdictions.

Written Comments: Interested parties may submit written comments by email message in advance of the webinar to Jeff Slowikowski, Designated Federal Official, at *Jeff.Slowikowski@usdoj.gov,* no later than Wednesday, July 27, 2016. In the alternative, interested parties may fax comments to 202–307–2819 and contact Melissa Kanaya at 202–532–0121 to ensure that they are received. [These are not toll-free numbers.]

Robert L. Listenbee,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2016–17306 Filed 7–21–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Longitudinal Survey of Youth 1979

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) revision titled, “National Longitudinal Survey of Youth 1979,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 22, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1220-001* this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the National Longitudinal Survey of Youth 1979 (NLSY79). The NLSY79 is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; they will be ages 51 to 58 when the planned round twenty-seven of interviews is conducted in 2016 and 2017. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation. In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31, of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. By 2016, the sample includes very few children age 14 and under and so we will no longer conduct a separate child survey; children age 12 and older will join the Young Adults. The Young Adult group will include 1,492 respondents ages 12–22 and 5,178 respondents age 23 and older in Round 27. One DOL goal is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. The BLS has undertaken a continuing redesign effort to examine the current content of the NLSY79 and provide direction for changes that may be appropriate as the respondents age. The 2016 instrument reflects a number of changes recommended by experts in various fields of social science and by our own internal review of the survey's content. Additions to the questionnaire are accompanied by deletions of previous questions that largely offset the burden as compared to 2014. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1 and 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0109. The current approval is scheduled to expire on September 30, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 29, 2016 (81 FR 17496).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number

1220–0109. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: National Longitudinal Survey of Youth 1979.

OMB Control Number: 1220–0109.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 12,545.

Total Estimated Number of Responses: 12,555.

Total Estimated Annual Time Burden: 13,964 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 15, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17252 Filed 7–21–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Petition for Finding Under Employee Retirement Income Security Act Section 3(40)

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Petition for Finding Under Employee Retirement Income Security Act Section 3(40)," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 22, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1210-006* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Petition for Finding Under Employee Retirement Income Security Act (ERISA) section 3(40) (29 U.S.C. 1002(40)) information collection. Regulations 29 CFR 2570.150 *et seq.* provide procedures for an entity against whom State jurisdiction has been asserted to petition the Secretary to make a finding under ERISA section 3(40)(A)(i) (29 U.S.C. 1002(40)(A)(i)) that the entity is established or maintained under or pursuant to one or more collective bargaining agreements. The regulations establish procedures for initiating an administrative proceeding before the Office of Administrative Law Judges (OALJ) and establish that an OALJ decision shall constitute a finding under ERISA section 3(40)(A)(i). The regulations also provide for an appeal of an OALJ decision to the Secretary. ERISA sections 3(40) and 505 authorize this information collection. *See* 29 U.S.C. 1002(40), 1135.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0119.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2015 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0119. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Petition for Finding Under Employee Retirement Income Security Act Section 3(40).

OMB Control Number: 1210–0119.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: $41,000.

Dated: July 15, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17253 Filed 7–21–16; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 81 FR 31668, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission (including comments) may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

DATES: Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Materials Research Science and Engineering Centers (MRSECs).

OMB Number: 3145–0230.

Type of Request: Intent to seek approval to renew an information collection.

Overview of This Information Collection: The Materials Research Science and Engineering Centers (MRSECs) Program supports innovation in interdisciplinary research, education, and knowledge transfer. MRSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. MRSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

MRSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. MRSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

MRSECs are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, MRSECs are required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov* and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the MRSEC effort. Such reporting requirements are included in the cooperative agreement that is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) shared experimental facilities, (6) diversity, (7) management, and (8) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

MRSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 185 hours per center for 21 centers for a total of 3,885 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the 21 MRSECs.

Dated: July 19, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–17369 Filed 7–21–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0140]

Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the extension of Office of Management and Budget's (OMB) approval for an existing collection of information. The information collection is entitled, "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery."

DATES: Submit comments by September 20, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0140. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0140 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0140.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession No. ML16189A416.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2016–0140 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.
2. *OMB approval number:* 3150–0217.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* On occasion and annually.
6. *Who will be required or asked to respond:* Individuals and households; businesses and organizations; State, Local, or Tribal governments.
7. *The estimated number of annual responses:* 4,200.
8. *The estimated number of annual respondents:* 4,200.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,087.5.
10. *Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, for the purpose of improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data

that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 18th day of July, 2016.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–17345 Filed 7–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Determination of the successful completion of inspections, tests, and analyses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has determined that the inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met for multiple inspections, tests, analyses, and acceptance criteria (ITAAC) for the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Billy Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Licensee Notification of Completion of ITAAC

South Carolina Electric & Gas (SCE&G), on behalf of itself and the South Carolina Public Service Authority, (both hereafter called the licensee) has submitted ITAAC closure notifications (ICNs) under § 52.99(c)(1) of title 10 of the *Code of Federal Regulations* (10 CFR), informing the NRC that the licensee has successfully performed the required inspections, tests, and analyses, and that the acceptance criteria are met for:

VCSNS Unit 2 ITAAC

2.1.02.08a.i (28), 2.1.02.08a.ii (29), 2.2.03.08c.vi.01 (189), 2.2.03.08c.vi.02 (190), 2.5.02.13 (552), 3.1.00.01 (733), C.3.8.01.04.01 (848), C.3.8.01.05.01.01 (849), C.3.8.01.05.02.01 (857), and C.3.8.01.05.02.02 (858)

VCSNS Unit 3 ITAAC

2.1.02.08a.i (28), 2.1.02.08a.ii (29), 2.1.03.11 (86), 2.2.03.08c.vi.01 (189), 2.2.03.08c.vi.02 (190), 2.5.02.13 (552), 3.1.00.01 (733), C.3.8.01.04.01 (848), C.3.8.01.05.01.01 (849), C.3.8.01.05.02.01 (857), and C.3.8.01.05.02.02 (858)

The ITAAC for VCSNS Unit 2 are in Appendix C of the VCSNS Unit 2 combined license (ADAMS Accession No. ML14100A092). The ITAAC for VCSNS Unit 3 are in Appendix C of VCSNS Unit 3 combined license (ADAMS Accession No. ML14100A101).

II. NRC Staff Determination of Completion of ITAAC

The NRC staff has determined that the specified inspections, tests, and analyses have been successfully completed, and that the specified acceptance criteria are met. The documentation of the NRC staff's determination is in the ITAAC Closure Verification Evaluation Form (VEF) for each ITAAC. The VEF is a form that represents the NRC staff's structured process for reviewing ICNs. Each ICN presents a narrative description of how the ITAAC was completed. The NRC's ICN review process involves a determination on whether, among other things: (1) Each ICN provides sufficient information, including a summary of the methodology used to perform the ITAAC, to demonstrate that the inspections, tests, and analyses have been successfully completed; (2) each ICN provides sufficient information to demonstrate that the acceptance criteria of the ITAAC are met; and (3) any NRC inspections for the ITAAC have been completed and any ITAAC findings associated with that ITAAC have been closed.

The NRC staff's determination of the successful completion of these ITAAC is based on information available at this time and is subject to the licensee's ability to maintain the condition that the acceptance criteria are met. If the staff receives new information that suggests the staff's determination on any of these ITAAC is incorrect, then the staff will determine whether to reopen that ITAAC (including withdrawing the staff's determination on that ITAAC). The NRC staff's determination will be used to support a subsequent finding, pursuant to 10 CFR 52.103(g), at the end of construction that all acceptance criteria in the combined license are met. The ITAAC closure process is not finalized for these ITAAC until the NRC makes an affirmative finding under 10 CFR 52.103(g). Any future updates to the status of these ITAAC will be reflected on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/oversight/itaac.html.*

This notice fulfills the staff's obligations under 10 CFR 52.99(e)(1) to publish a notice in the **Federal Register** of the NRC staff's determination of the successful completion of inspections, tests and analyses.

Virgil C. Summer Nuclear Station Unit 2, Docket No. 5200027

A complete list of the review status for VCSNS Unit 2 ITAAC, including the submission date and ADAMS accession number for each ICN received, the ADAMS accession number for each VEF, and the ADAMS accession numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/sum2-icnsr.pdf.*

Virgil C. Summer Nuclear Station Unit 3, Docket No. 5200028

A complete list of the review status for VCSNS Unit 3 ITAAC, including the submission date and ADAMS accession number for each ICN received, the ADAMS accession number for each VEF, and the ADAMS accession numbers for the inspection reports associated with these specific ITAAC, can be found on the NRC's Web site at *http://www.nrc.gov/reactors/new-reactors/new-licensing-files/sum3-icnsr.pdf.*

Dated at Rockville, Maryland, this 11th day of July 2016.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–17386 Filed 7–21–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric & Gas Company; South Carolina Public Service Authority; Increased Concrete Thickness Tolerance for Column Line J–1 and J–2 Walls Above 66′6″

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a change to the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 47 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to the South Carolina Electric & Gas Company (SCE&G) and the South Carolina Public Service Authority (together called the licensee) in March 2012, for the construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina. The granting of the exemption allows the changes to Tier 1 information requested in the license amendment request. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

DATES: The exemption and combined license amendment referenced in this document are available on July 22, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "Begin Web-Based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. The request for the amendment and exemption was submitted by the letter dated January 14, 2016 (ADAMS Accession No. ML16015A058). The licensee supplemented this request by letter dated February 22, 2016 (ADAMS Accession No. ML16053A405).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Specific information on NRC's PDR is available at *http://www.nrc.gov/reading-rm/pdr.html.*

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Sr. Project Manager, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In a letter dated January 14, 2016, and revised on February 22, 2016, the licensee requested a license amendment and exemption (ADAMS Accession Nos. ML16015A058 and ML16053A405). The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, "Design Certification Rule for the AP1000 Design," and issuing License Amendment No. 47 to COLs NPF–93 and NPF–94. The exemption is required by paragraph A.4 of section VIII, "Processes for Changes and Departures," appendix D to 10 CFR part 52 to allow the licensee to change Tier 1 information. With the requested amendment, the licensee sought proposed changes related to the plant-specific Tier 1 information. The Tier 1 information for which a plant-specific exemption is being requested includes plant-specific Tier 1, Table 3.3–1 to change the tolerance for the concrete thickness of the column line J–1 and J–2 walls from ±1 inch to a tolerance of −1 inch and +4 inch for a length of 24 inches at the interface of these reinforced concrete walls to structural module connections at the column line

4 structural module wall (*i.e.*, the north wall of the CA20 module) and authorizes changes to COL Updated Final Safety Analysis Report (UFSAR) Subsection 3.8.4.1.2 to provide a basis for the revision to plant-specific Tier 1 information. The license amendment request contained proposed changes to plant-specific Tier 1, COL Appendix C, and UFSAR Tier 2 text.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16099A189.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML16099A308 and ML16099A311, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16099A304 and ML16099A257, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

The following is the exemption document issued to VCSNS, Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated January 14, 2016, and revised by letter dated February 11, 2016, the South Carolina Electric & Gas Company (SC&G/licensee) requested from the Nuclear Regulatory Commission (NRC/Commission) an exemption to allow changes from Tier 1 information in the plant-specific Tier 1 to the certified AP1000 Design, Tier 1 information, incorporated by reference in title 10 of the *Code of Federal Regulations* (10 CFR) part 52, appendix D, "Design Certification Rule for the AP1000 Design," as part of license amendment request (LAR) 15–20, "Increased Concrete Thickness Tolerance for Column Line J–1 and J–2 Walls above 66′-6″."

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession Number ML16099A189, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified AP1000 Design Control Document Tier 1 information, as described in the licensee's request dated January 14, 2016, and revised by letter dated February 11, 2016. This exemption is related to, and necessary for, the granting of License Amendment No. 47, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession Number ML16099A189), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated January 14, 2016, and supplemented by letter dated February 11, 2016. The proposed amendment is described in Section I.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on March 10, 2016 (81 FR 12751). No comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. The supplement, dated February 11, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on January 14, 2016, and supplemented by letter dated February 11, 2016. The exemption and amendment were issued on March 31, 2015, as part of a combined package to the licensee (ADAMS Accession No. ML16099A153).

Dated at Rockville, Maryland, this 11th day of July 2016.

For the Nuclear Regulatory Commission.

Jennifer Dixon-Herrity,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–17387 Filed 7–21–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78353; File No. SR–BOX–2016–32]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs That Permit the Exchange to Have No Minimum Size Requirement for Orders Entered Into the PIP and COPIP

July 18, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2016, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot programs that permit the Exchange to have no minimum size requirement for orders entered into the PIP (''PIP Pilot Program'') and COPIP (''COPIP Pilot Program''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the PIP and COPIP Pilot Programs for an additional six months or until the date on which the pilot programs are approved on a permanent basis, whichever is earlier. The PIP and COPIP Pilot Programs are currently set to expire on July 18, 2016. The PIP and COPIP Pilot Programs allow the Exchange to have nominimum size requirement for orders entered into the PIP[3] and the COPIP.[4] The Exchange has been providing certain data to the Commission during the PIP and COPIP Pilot Programs. The proposed rule change retains the text of IM–7150–1 to Rule 7150 and IM–7245–1 to Rule 7245; and seeks to extend the operation of the PIP and COPIP Pilot Programs until January 18, 2017.

The Exchange notes that the PIP and COPIP Pilot Programs permit Participants to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least equal to the national best bid or offer. Any order entered into the COPIP is guaranteed an execution at the end of the auction at a price at least equal to or better than the cNBBO,[5] cBBO[6] and BBO on the Complex Order Book for the Strategy at the time of commencement.

The Exchange believes that extending the pilot period is appropriate because it will allow the Exchange the Commission additional time to analyze data regarding the PIP and COPIP Pilot Programs that the Exchange has committed to provide. As such, the Exchange believes that it is appropriate to extend the current operation of the Pilot Programs. The Exchange continues to believe that there remains meaningful competition for all size orders and there is significant price improvement for all orders executed through the PIP and COPIP; and that there is an active and liquid market functioning on the Exchange outside the PIP and COPIP auctions.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PIP Pilot Program is currently set to expire on July 18, 2016. *See* Securities Exchange Act Release Nos. 66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission), 67255 (June 26, 2012) 77 FR 39315 (July 2, 2013) (SR–BOX–2012–009) (Notice of Filing and Immediate Effectiveness of a Proposal To Extend a Pilot Program That Permits BOX to Have No Minimum Size Requirement for Orders Entered Into the Price Improvement Period), 69846 (June 25, 2013) 78 FR 39365 (July 1, 2013) (SR–BOX–2013–33) (Notice of Filing and Immediate Effectiveness of a Proposal To Extend a Pilot Program That Permits BOX to Have No Minimum Size Requirement for Orders Entered Into the Price Improvement Period), 72545 (July 7, 2014) 79 FR 40182 (July 11, 2014) (SR–BOX–2014–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend Interpretive Material to Rule 7150 (Price Improvement Period ''PIP'') and Interpretive Material to Rule 7245 (Complex Order Price Improvement Period ''COPIP'')), 73314 (October 7, 2014) 79 FR 61682 (October 14, 2014) (SR–BOX–2014–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs That Permit the Exchange To Have No Minimum Size Requirement for Orders Entered Into the PIP (''PIP Pilot Program'') and COPIP (''COPIP Pilot Program'') Until December 18, 2014), 73831 (December 12, 2014) 79 FR 75211 (December 17, 2014) (SR–BOX–2014–27) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretive Material to Rule 7150 and Interpretive Material to Rule 7245 To Extend the Pilot Period That Permit the Exchange To Have No Minimum Size Requirement for Orders Entered Into the PIP and COPIP Until July 18, 2015), and 75480 (July 17, 2015) 80 FR 43803 (July 23, 2016) (SR–BOX–2015–27) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Programs that Permit the Exchange to Have No Minimum Size Requirement for Orders Entered into the PIP and COPIP Until July 18, 2016).

[4] The COPIP Pilot Program is currently set to expire on July 18, 2016. *See* Securities Exchange Act Release Nos. 71148 (December 19, 2013) 78 FR 78437 (December 26, 2013) (SR–BOX–2014–23) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Permit Complex Orders to Participate in Price Improvement Periods), 72545 (July 7, 2014) 79 FR 40182 (July 11, 2014) (SR–BOX–2014–19) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend Interpretive Material to Rule 7150 (Price Improvement Period ''PIP'') and Interpretive Material to Rule 7245 (Complex Order Price Improvement Period ''COPIP'')), 73314 (October 7, 2014) 79 FR 61682 (October 14, 2014) (SR–BOX–2014–23) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Programs That Permit the Exchange To Have No Minimum Size Requirement for Orders Entered Into the PIP (''PIP Pilot Program'') and COPIP (''COPIP Pilot Program'') Until December 18, 2014), 73831 (December 12, 2014) 79 FR 75211 (December 17, 2014) (SR–BOX–2014–27) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretive Material to Rule 7150 and Interpretive Material to Rule 7245 To Extend the Pilot Period That Permit the Exchange To Have No Minimum Size Requirement for Orders Entered Into the PIP and COPIP Until July 18, 2015), and 75480 (July 17, 2015) 80 FR 43803 (July 23, 2016) (SR–BOX–2015–27) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Programs that Permit the Exchange to Have No Minimum Size Requirement for Orders Entered into the PIP and COPIP Until July 18, 2016).

[5] As defined in BOX Rule 7240(a)(3), the term ''cNBBO'' means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy.

[6] As defined in BOX Rule 7240(a)(1), the term ''cBBO'' means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the PIP and COPIP Pilot Programs for an additional six months or until the date on which the pilot programs are approved on a permanent basis, whichever is earlier. The Exchange represents that the PIP and COPIP Pilot Programs are designed to create tighter markets and ensure that each order receives the best possible price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the PIP and COPIP Pilot Programs, the proposed rule change will allow additional time to analyze data regarding the PIP and COPIP Pilot Programs that the Exchange has committed to provide.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange stated that the current PIP and COPIP Pilot Programs are set to expire on July 18, 2016. The Exchange stated that a waiver will permit the PIP and COPIP Pilot Programs to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the PIP and COPIP Pilot Programs to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot. Therefore, the Commission designates the proposed rule change to be operative on July 18, 2016.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2016–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–32 and should be submitted on or before August 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17280 Filed 7–21–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Scanner Technologies Corp., Seville Ventures Corp., StarInvest Group, Inc., and The Digital Development Group Corp.; Order of Suspension of Trading

July 20, 2016.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Scanner Technologies Corp. ("SCNI[1]") (CIK No. 217222), a revoked New Mexico corporation located in Minneapolis, Minnesota with a class of securities registered with the Commission pursuant to Securities Exchange Act of 1934 ("Exchange Act") Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2008. On January 29, 2016, the Commission's Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to SCNI requesting compliance with its periodic filing requirements but SCNI did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of EDGAR Filer Manual) ("Commission Issuer Address Rules"). As of July 14, 2016, the common stock of SCNI was quoted on OTC Link operated by OTC Markets Group Inc. (formerly "Pink Sheets") ("OTC Link"), had four market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(a).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Seville Ventures Corp. ("SVLE") (CIK No. 1527424), a revoked Nevada corporation located in Byron, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended April 30, 2014. On October 19, 2015, Corporation Finance sent a delinquency letter to SVLE requesting compliance with its periodic filing requirements but SVLE did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of July 14, 2016, the common stock of SVLE was quoted on OTC Link, had one market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of StarInvest Group, Inc. ("STIV") (CIK No. 810270), a revoked Nevada corporation located in Long Beach, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–K for the period ended December 31, 2010. On March 3, 2014, Corporation Finance sent a delinquency letter to STIV requesting compliance with its periodic filing requirements but STIV did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of July 14, 2016, the common stock of STIV was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

It appears to the Commission that there is a lack of current and accurate information concerning the securities of The Digital Development Group Corp. ("DIDG") (CIK No. 1379699), a Nevada corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) because it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10–Q for the period ended September 30, 2014. On November 30, 2015, Corporation Finance sent a delinquency letter to DIDG requesting compliance with its periodic filing requirements but DIDG did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission Issuer Address Rules. As of July 14, 2016, the common stock of DIDG was quoted on OTC Link, had five market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2–11(f)(3).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 20, 2016, through 11:59 p.m. EDT on August 2, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–17449 Filed 7–20–16; 11:15 am]

BILLING CODE 8011–01–P

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[1] The short form of each issuer's name is also its stock symbol.

SMALL BUSINESS ADMINISTRATION

Harbert Mezzanine Partners II SBIC, L.P., License No. 04/04–0298; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners II SBIC, L.P., 2100 Third Avenue North, Suite 600, Birmingham, AL 35203, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of CDA, Inc., 8500 South Tyron Street, Charlotte, NC 28273, has sought an exemption under Section 312 of the Act and 13 CFR 107.730 financings which constitute conflicts of interest of the Small Business Administration ("SBA") Rules and Regulations. Harbert Mezzanine Partners II SBIC, L.P. proposes to provide debt financing to CDA, Inc., owned by Harbinger Mezzanine Partners, L.P., an associate as defined in 13 CFR 107.50 of the SBA Rules and Regulations. Therefore this transaction is considered a conflict of interest requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Mark Walsh,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2016–17317 Filed 7–21–16; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0033]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information;

its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB); Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA); Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0033].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than September 20, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Request for Hearing by Administrative Law Judge—20 CFR 404.929, 404.933, 416.1429, 404.1433, 418.1350, and 42 CFR 405.722—0960–0269.* When SSA denies applicants' or beneficiaries' requests for new or continuing benefits, the Social Security Act entitles those applicants or beneficiaries to request a hearing to appeal the decision. To request a hearing, individuals complete Form HA–501, the associated Modernized Claims System (MCS) or Modernized Supplemental Security Income Claims System (MSSICS) interview, or the Internet application (i501). SSA uses the information to determine if the individual: (1) Filed the request within the prescribed time; (2) is the proper party; and (3) took the steps necessary to obtain the right to a hearing. SSA also uses the information to determine: (1) The individual's reason(s) for disagreeing with SSA's prior determinations in the case; (2) if the individual has additional evidence to submit; (3) if the individual wants an oral hearing or a decision on the record; and (4) whether the individual has (or wants to appoint) a representative. The respondents are Social Security benefit applicants and recipients who want to appeal SSA's denial of their request for new or continued benefits, and Medicare Part B recipients who must pay the Medicare Part B Income-Related Monthly Adjustment Amount.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–501; Modernized Claims System (MCS); Modernized Supplemental Security Income Claims System (MSSICS)	25,953	1	10	4,326
I501 (Internet iAppeals)	643,516	1	5	53,626
Totals	669,469			57,952

2. *Travel Expense Reimbursement—20 CFR 404.999(d) and 416.1499—0960–0434.* The Social Security Act provides for travel expense reimbursement from Federal and State agencies for claimant travel incidental to medical examinations, and to parties, their representatives, and all reasonably necessary witnesses for travel exceeding 75 miles to attend medical examinations, reconsideration interviews and proceedings before an administrative law judge. Reimbursement procedures require the claimant to provide: (1) A list of expenses incurred, and (2) receipts of such expenses. Federal and state personnel review the listings and receipts to verify the reimbursable amount to the requestor. The respondents are claimants for Title II benefits and Title XVI payments, their representatives, and witnesses.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
404.99(d) & 416.1499	60,000	1	10	10,000

3. *Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009, and 418.1325—0960–0622.* Individuals use Form SSA–561–U2, the associated MCS interview, or the Internet application (i561) to initiate a request for reconsideration of a denied claim. SSA uses the information to document the request and to determine an individual's eligibility or entitlement to Social Security benefits (Title II), SSI payments (Title XVI), Special Veterans Benefits (Title VIII), Medicare (Title XVIII), and for initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration of a denied claim.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–561 and Modernized Claims System (MCS)	550,370	1	8	73,383

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
I561 (Internet iAppeals)	911,330	1	5	75,944
Totals	1,461,700			149,327

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than August 22, 2016 Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Application for Supplemental Security Income—20 CFR 416.207 and 416.305–416.335, Subpart C—0960–0229.* The Supplemental Security Income (SSI) program provides aged, blind, and disabled individuals who have little or no income, with funds for food, clothing, and shelter. Individuals complete Form SSA–8000–BK to apply for SSI. SSA uses the information from Form SSA–8000–BK and its electronic intranet counterpart, MSSICS, to determine: (1) Whether SSI claimants meet all statutory and regulatory eligibility requirements; and (2) SSI payment amounts. The respondents are applicants for SSI or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8000–BK (Paper Version)	17,541	1	41	11,986
MSSICS/Signature Proxy	1,373,401	1	35	801,151
Totals	1,390,942			813,137

2. *Medical Application for Supplemental Security Income—20 CFR 416.305–416.335, Subpart C—0960–0444.* SSA uses Form SSA–8001–BK to determine an applicant's eligibility for SSI and SSI payment amounts. SSA employees also collect this information during interviews with members of the public who wish to file for SSI. SSA uses the information for two purposes: (1) To formally deny SSI for non-medical reasons when information the applicant provides results in ineligibility; or (2) to establish a disability claim, but defer the complete development of non-medical issues until SSA approves the disability. The respondents are applicants for SSI.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
MSSICS/Signature Proxy	937,207	1	20	312,402
Non-MSSICS (Paper)	1,033	1	20	344
Totals	938,240			312,746

3. *Function Report—Child (Birth to 1st Birthday, Age 1 to 3rd Birthday, Age 3 to 6th Birthday, Age 6 to 12th Birthday, Age 12 to 18th Birthday)—20 CFR 416.912 and 416.924a(a)(2)—0960–0542.* As part of SSA's disability determination process, we use Forms SSA–3375–BK through SSA–3379–BK to request information from a child's parent or guardian for children applying for SSI. The five different versions of the form contain questions about the child's day-to-day functioning appropriate to a particular age group; thus, respondents use only one version of the form for each child. The adjudicative team (disability examiners and medical or psychological consultants) of State disability determination services offices collect the information on the appropriate version of this form (in conjunction with medical and other evidence) to form a complete picture of the children's ability to function and their impairment-related limitations. The adjudicative team uses the completed profile to determine: (1) If each child's impairment(s) results in marked and severe functional limitations; and (2) whether each child is disabled. The respondents are parents and guardians of child applicants for SSI.

Type of Request: Revision on an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3375; SSA-3376; SSA-3377; SSA-3378; SSA–3379	532,000	1	20	177,333

4. *Government-to-Government Services Online Web site Registration; Government-to-Government Services Online Web site Account Modification/Deletion Form—20 CFR 401.45—0960–0757.* The Government-to-Government Services Online (GSO) Web site allows various external organizations to submit files to a variety of SSA systems and, in some cases, receive files in return. The SSA systems that process data transferred via GSO include, but are not limited to, systems responsible for disability processing and benefit determination or termination. SSA uses the information on Form SSA–159, Government-to-Government Online Web site Registration Form, to register the requestor to use the GSO Web site. Once we receive the SSA–159, SSA provides the user with account information and conducts a walkthrough of the GSO Web site as necessary. Established organizations may submit Form SSA–159 to register additional users as well. The established requesting organizations can also complete Form SSA–160, Government-to-Government Online Web site Account Modification/Deletion Form, to modify their online accounts (*e.g.,* address change). Respondents are State and local government agencies, and some private sector business entities.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–159	1,543	1	15	386
SSA–160	130	1	15	33
Totals	1,673			419

Dated: July 18, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–17259 Filed 7–21–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9648]

Culturally Significant Objects Imported for Exhibition Determinations: "Every People Under Heaven: Jerusalem, 1000–1400" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Every People Under Heaven: Jerusalem, 1000–1400," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on about September 20, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 14, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17395 Filed 7–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9647]

Culturally Significant Objects Imported for Exhibition Determinations: "Breaking News: Turning the Lens on Mass Media" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Breaking News: Turning the Lens on Mass Media," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about December 20, 2016, until on or about April 30, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: July 13, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–17396 Filed 7–21–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9646]

30-Day Notice of Proposed Information Collection: Electronic Diversity Visa Entry Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to August 22, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Lage, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Electronic Diversity Visa Entry Form
- *OMB Control Number:* 1405–0153
- *Type of Request:* Extension of Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–5501
- *Respondents:* Diversity Visa Registrants
- *Estimated Number of Respondents:* 11,072,400
- *Estimated Number of Responses:* 11,072,400
- *Average Time Per Response:* 30 minutes
- *Total Estimated Burden Time:* 5,536,200 hours
- *Frequency:* Annually
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Department of State utilizes the Electronic Diversity Visa Lottery (EDV) Entry Form to elicit information necessary to ascertain the applicability of the legal provisions of the diversity immigrant visa program. The 2 primary requirements are: the applicant is from a low admission country and is a high school graduate, or has two years of experience in a job that requires two years of training. The foreign nationals complete the electronic entry forms and then applications are randomly selected for further participation in the program. Department of State regulations pertaining to diversity immigrant visas under the INA are published in 22 CFR 42.33.

Methodology

The EDV Entry Form is available online at *www.dvlottery.state.gov* and can only be submitted electronically during the annual registration period.

Dated: June 24, 2016.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–17399 Filed 7–21–16; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21069]

Academy Bus, LLC, and Corporate Coaches, Inc.—Purchase of Certain Assets of Corporate Coaches, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On June 23, 2016, Academy Bus, LLC (Florida) (Academy), a motor carrier of passengers, and Corporate Coaches, Inc. (Corporate Coaches), also a motor carrier of passengers, jointly filed an application under 49 U.S.C. 14303 for Academy to acquire certain properties of Corporate Coaches. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by September 6, 2016. The applicants may file a reply by September 20, 2016. If no opposing comments are filed by September 6, 2016, this notice shall be effective on September 7, 2016.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21069 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Academy's representatives: Peter A. Pfohl and Bradford J. Kelley, Slover and Loftus, LLP, 1224 Seventeenth Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe (202) 245–0376. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Academy is a motor carrier licensed by the Federal Motor Carrier Safety Administration (MC–646780) and provides charter bus operations in Florida. The applicants state that Academy is owned by Academy Bus (Florida) EST Trust (Academy Trust), a non-carrier controlled by Francis Tedesco, sole trustee. According to the applicants, Franmar Leasing, LLC (Franmar) is a non-carrier controlled by the Tedesco Family ESB Trust (Tedesco Trust), also a non-carrier, exclusively engaged in the ownership and leasing of passenger motor coaches.[1] The applicants state that Corporate Coaches, a licensed motor carrier of passengers (MC–539370), presently operates charter motor coach transportation services and black car sedan and limo services primarily in the state of Florida. The applicants further state that Andy Bardar is the shareholder, President, and Chief Executive Officer of Corporate Coaches.

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[1] The applicants state that Francis Tedesco and Mark Tedesco are lifetime beneficiaries of the Tedesco Trust, which controls Academy Bus, LLC (New Jersey), a non-carrier and the sole member of three limited liability company passenger motor carriers: Academy Express, LLC, Academy Lines, and Number 22 Hillside, LLC (Academy Companies). However, according to the applicants, none of the Academy Companies are parties to the agreement with Corporate Coaches that is the subject of this application.

Corporate Coaches proposes to sell all the assets used in its motor coach passenger transportation business pursuant to an Asset Purchase Agreement (APA), dated May 16, 2016. According to the applicants, this transaction is a result of the business determination made by the owners of Corporate Coaches to permanently withdraw from the motor coach transportation business and direct all of its future efforts and activities to the company's black car sedan and limo services. Under the terms of the APA, the applicants state, Franmar will acquire the motor coach assets of Corporate Coaches, and Academy will acquire Corporate Coaches' motor coach customer lists, charter contracts, telephone numbers, Web site, charter contract deposits, and related assets and intangibles.[2]

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Academy has submitted information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b) and a statement that Academy and its motor carrier affiliated companies exceeded $2 million in gross operating revenues for the preceding 12-month period. *See* 49 U.S.C. 14303(g).[3]

Academy and Corporate Coaches assert that this acquisition is in the public interest because the transaction will not have a materially detrimental impact on the adequacy of transportation services available to the public. The applicants also assert that the transaction would promote more efficiencies and greater economic use of existing transportation capital resources, and offer the general public continued service options to the customers of Corporate Coaches in need of such service. They also state that the proposed transaction would not result in an increase to fixed charges as the proposed transaction by the carriers is expected to be for cash. In addition, according to the applicants, the proposed transaction would also have no adverse effect on qualified Corporate Coaches employees at the locations from which Corporate Coaches operates because Academy will interview and offer employment opportunities to those employees, a necessity to permit Academy to continue to operate the acquired motor coach assets. Finally, the applicants state that the proposed transaction is unlikely to exert any anticompetitive impact because none of the operable motor vehicles will be scrapped by the seller, and no new buses will need to be purchased by Franmar at this time. Thus, the applicants state that the public would not lose service because the same number of buses would continue to operate.

On the basis of the application, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective September 7, 2016, unless opposing comments are filed by September 6, 2016.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: July 15, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Tia Delano,

Clearance Clerk.

[FR Doc. 2016–17352 Filed 7–21–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0017]

Fixing America's Surface Transportation Act—Designation of Alternative Fuel Corridors

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; solicitation of nominations.

SUMMARY: Section 1413 of the Fixing America's Surface Transportation (FAST) Act requires the Secretary of Transportation to designate national electric vehicle (EV) charging, hydrogen, propane, and natural gas fueling corridors. The FHWA is issuing this **Federal Register** Notice to invite nominations from State and local officials to assist in making such designations.

DATES: Submissions must be received on or before August 22, 2016. Late submissions will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number FHWA–2016–0017 by any one of the following methods:

Fax: 1–202–493–2251;

Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or electronically through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number for this notice (FHWA–2016–0017). The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

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[2] The applicants also state that ABC Bus Inc. (ABC), a non-carrier motor coach dealer, shall purchase the remaining motor coaches owned by Corporate Coaches that are not purchased by Franmar. The applicants state that ABC is unaffiliated with the Academy Trust or the Tedesco Trust.

[3] Applicants with gross operating revenues exceeding $2 million are required to meet the requirements of 49 CFR 1182.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Turchetta, Office of Natural Environment, (202) 493–0158, or via email at *diane.turchetta@dot.gov.* For legal questions, please contact Robert Black, Office of the Chief Counsel, (202) 366–1359, or via email at *robert.black@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1413 of the FAST Act (Section 1413), signed into law on December 4, 2015, requires the Secretary to designate national EV charging, hydrogen, propane, and natural gas fueling corridors within 1 year from the date of enactment (December 4, 2016). (23 U.S.C. 151). In accordance with 23 U.S.C. 151(a), corridor designations must identify near-and long-term need for, and location of, EV charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, and natural gas fueling infrastructure at strategic locations along major national highways to improve mobility of passenger and commercial vehicles that employ electric, hydrogen fuel cell, propane, and natural gas fueling technologies across the United States.

The FHWA must solicit nominations for corridors from State and local officials and involve a range of stakeholders. (23 U.S.C. 151(b) and (c)). Within 5 years of establishing the corridors, and every 5 years thereafter, DOT must update and re-designate the corridors. During the designation and re-designation of the corridors, the FHWA is to issue a report that identifies EV charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, and natural gas fueling infrastructure and standardization needs for electricity providers, industrial gas providers, natural gas providers, infrastructure providers, vehicle manufacturers, electricity purchases, and natural gas purchases. The report must also establish aspirational goals of achieving strategic deployment of EV charging infrastructure, hydrogen fueling infrastructure, propane fueling infrastructure, and natural gas fueling infrastructure in those corridors by the end of fiscal year 2020. The FHWA held two national Webinars (May 12, 2016, and May 16, 2016) at which stakeholders were invited to provide input to FHWA on the process, timeline, and specific topics related to the implementation of Section 1413. The presentation, transcript of chat pods, and Webinar recordings can be found at: *http://www.fhwa.dot.gov/environment/climate_change/mitigation/webinars/.*

Information To Be Included in Nominations

Any State or local agency is invited to nominate an alternative fuel corridor for designation. For the purposes of this solicitation, an eligible corridor is defined as a segment of the National Highway System (NHS).[1] However, to encourage the creation of a national network of alternative fuel infrastructure, a corridor may also include feeder routes/roads that connect to that NHS segment. Both corridors within a single State and multistate corridors are eligible, with the goal of connecting communities, cities, and regions to develop a national network of alternative fuel facilities. A State or local agency interested in submitting a nomination for a corridor designation should develop a 20-page maximum nomination (nothing beyond the first 20 pages will be considered, including attachments) containing the following elements/information:

- Corridor being proposed for designation (include the official name of the NHS segment and beginning and end points of the proposed corridor);
- Name of lead State or local agency originating the nomination;
- Name of the entity (or entities) with jurisdiction over the proposed corridor (*i.e.,* State, local government, Indian tribe and/or Federal land management agency);
- Description of corridor, including the major metropolitan areas and/or intermodal facilities located along the corridor, how the corridor contributes to the national network, and why it is being proposed for designation;
- Corridor use (*i.e.,* mainly freight, mainly passenger, or both);
- Approximate population along proposed corridor or in general area/region, including median income and basic demographic information;
- Benefits to disadvantaged groups and/or communities, which may include low-income groups, persons with visible or hidden disabilities, elderly individuals, and minority persons and populations;
- Existing and projected usage of the corridor (*i.e.,* vehicle miles traveled and/or freight congestion/tonnage moved);
- Goals for increasing the use of alternative fuels;
- Type of alternative fuel(s) currently used and/or projected to be used along the corridor;
- Estimated/projected cost of planned alternative fuel facilities on proposed corridor, if known;
- Type, number, and distance between existing and planned alternative fuel facilities by fuel type located along proposed corridor (*e.g.,* for electric vehicle charging corridors or CNG facilities, the type and level of charging technology in use or planned);
- Demonstrated interest and support for alternative fuel facilities from stakeholders;
- Standardization needs for fuel/charging providers, manufacturers, and purchasers; and
- Goals for strategic deployment of refueling/recharging infrastructure along corridor and/or network for short-term (by the end of fiscal year 2020), and long-term (by the end of fiscal year 2040).

Criteria for Designating Alternative Fuel Corridors[2]

The FHWA plans to designate alternative fuel corridors based on the criteria outlined in this solicitation. Corridor designations will be selected based on the following criteria, which are listed in *priority* order and indicated by numbered and bolded headings. Sub-bullets are not in priority order:

1. Alternative Fuel Facilities

- Number of existing alternative fuel facilities on corridor;
- Number of additional planned/projected alternative fuel facilities on corridor;
- Distance between existing and planned/projected alternative fuel facilities on corridor;
- Visibility, convenience, and accessibility to the users on the corridor; and

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[1] See following FHWA Web site for definitions and descriptions of the NHS: *http://www.fhwa.dot.gov/planning/national_highway_system/.*

[2] Section 111 of Title 23 United States Code prohibits Interstate rest areas built after January 1, 1960 from offering commercial services such as fuel and food on the Interstate right-of-way. In light of this provision, an alternative fuel facility can be located on an Interstate right-of-way, but a fee may *not* be charged for the facility.

- Explanation of successfully developing new alternative fuel facilities along the corridor based on past activity/success.

2. Corridor Scale/Impact

- Connections to other segments of the NHS in order to create/develop a national network of alternative fuel infrastructure;
- Whether the corridor connects to one or more major metropolitan areas and/or multiple States (multiple States that submit a joint application must identify a lead applicant as the primary point of contact); and/or
- Whether the corridor connects to one or more major intermodal facilities (*i.e.* freight, transit, etc.).

3. Emission Reductions

- Estimated reductions in greenhouse gas and/or criteria pollutant emissions along the corridor, or in the area, due to existing and projected alternative fuel facilities.

4. Development of Team and Degree of Collaboration and Support

- Degree of collaboration, and formation of partnerships, regarding alternative fuel vehicles and infrastructure with both public and private sector entities, which should include:
  - State and local officials (nomination must include support from the transportation agency or agencies with jurisdiction over the proposed corridor such as the State, local government, Indian tribe, and/or Federal land management agency;
  - Other Federal agencies;
  - Department of Energy's (DOE) Clean Cities Program, as well as its associated network of coalitions and stakeholders); and
  - Representatives of energy utilities; electric, fuel cell electric, propane, and natural gas vehicle industries; equipment manufacturers; fuel suppliers; Original Equipment Manufacturers; public or private fleets; auto dealerships; energy marketers; utilities/energy companies; alternative fuel and clean air advocacy organizations; local and regional planning entities; freight and shipping industry; clean technology firms; hospitality industry; highway rest stop vendors; industrial gas and hydrogen manufacturers; and
- Demonstrated interest and support. For example, support demonstrated through past work in the area on alternative fuels, support from local elected officials, public support, stakeholder support, development of incentives, etc.
- Whether the proposed corridor is an existing electric vehicle charging, hydrogen fueling, propane fueling or natural gas corridor been designated by a State or group of States.

Optional Information and Considerations

- Consideration of Clean Cities coalition[3] locations/existing alternative fuel markets;
- Whether the corridor or segments of the corridor are located in in ozone, carbon monoxide, or particulate matter nonattainment or maintenance areas;
- Goals for greenhouse gas and/or criteria pollutant emission reductions;
- Available State and/or local alternative fuel vehicle incentives/programs;
- Current and future demand for alternative fuel facilities based on current and predicted usage patterns (passenger, freight, and other commercial vehicles). The analysis of future demand/alternative fuel facilities should include description of how the corridor will be extended and/or how distances between stations will be shortened (*i.e.*, gaps closed);
- Other alternative fuels included under the Energy Policy Act of 2005 but not included in Section 1413, or vehicle technologies such as Truck Stop Electrification used along corridor that contribute to greenhouse gas or criteria air pollutant emission reductions;
- Availability of alternative fuel vehicle support services in the vicinity/region (*e.g.* maintenance and repair shops, first responders, safety officials, towing and road-side rescue services, etc.);
- Potential of designation to serve as a national case to document lessons learned/best practices.

Support for Designated Corridors

Although Section 1413 does *not* provide dedicated funding for designated corridors, FHWA believes the designation of such corridors can serve important public purposes. For instance, the United States has pledged to reduce greenhouse gas (GHG) emissions 26–28 percent by 2025 and 80 percent or more by 2050. The transportation sector is a significant source of U.S. GHG emissions, (tailpipe GHG emissions from transportation sources accounted for 27 percent of total U.S. GHG emissions), and achieving reductions in these emissions will be needed to support national commitments. Alternative fuel corridors with support for lower-emitting vehicles can assist in this effort.

Furthermore, it is FHWA's goal and intent to create and expand a national network of alternative fueling and charging infrastructure along NHS corridors by developing a process that provides the opportunity for a formal corridor designation once the criteria set forth in the solicitation are met, and on a rolling basis, without a cap on the number of corridors; ensures that corridor designations are selected based on criteria that promote the "build out" of a national network; develops national signage and branding to help catalyze applicant and public interest; encourages multistate and regional cooperation and collaboration; and, brings together a consortium of stakeholders including State agencies, utilities, alternative fuel providers, and car manufacturers to promote and advance alternative fuel corridor designations in conjunction with the DOE.

In support of this goal, the FHWA intends to develop appropriate signage that may be placed on designated corridors in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).[4] The FHWA anticipates that any such signage will distinguish between "zero emission" corridors (supported by electric vehicle charging or hydrogen fueling infrastructure) and "alternative fuel" corridors (supported by propane or natural gas fueling infrastructure), to make clear the nature of the alternative fuel supported in each corridor.

Timeline

The deadline for this initial solicitation is August 22, 2016. After this deadline, FHWA will establish a process for future nominations and designations on a rolling basis.

Authority: Section 1413 of the FAST Act (Pub. L. 114–94).

Issued on: July 8, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–17132 Filed 7–21–16; 8:45 am]

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[3] *https://cleancities.energy.gov/coalitions/.*

[4] For information on the MUTCD please see the following Web site: *http://mutcd.fhwa.dot.gov.*

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0074]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel INVICTUS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 22, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0074. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel INVICTUS is:

INTENDED COMMERCIAL USE OF VESSEL: "Charter Fishing."

GEOGRAPHIC REGION: "Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling [including the North Gulf Coast and Prince William Sound])."

The complete application is given in DOT docket MARAD–2016–0074 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator

Dated: July 12, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–17413 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016–0072]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SANDPIPER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 22, 2016.

ADDRESSES: Comments should refer to docket number MARAD–2016–0072. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel Sandpiper is:

Intended Commercial Use of Vessel: "Weekend Captained Sailing Charters"

Geographic Region: "Minnesota, Wisconsin and Michigan" The complete application is given in DOT docket MARAD–2016–0072 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 11, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–17415 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2016 0073]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AIRLOOM; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before August 22, 2016

ADDRESSES: Comments should refer to docket number MARAD–2016–0073. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AIRLOOM is:

INTENDED COMMERCIAL USE OF VESSEL: Sailing tours.

GEOGRAPHIC REGION: "Washington State."

The complete application is given in DOT docket MARAD–2016–0073 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: July 12, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–17416 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0069]

Request for Information: Nationally Uniform 911 Data System; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: NHTSA published a document in the **Federal Register** of June 30, 2016, concerning a request for information on the development of a nationally uniform 911 data system. The document contained incorrect information and an incorrect email address.

FOR FURTHER INFORMATION CONTACT: Laurie Flaherty, 202–366–2705.

Correction

In the **Federal Register** of June 30, 2016, in FR Doc. 2016–15368, on page 42786, make the following two corrections:

a. In the third column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

> Laurie Flaherty, National Highway Traffic Safety Administration, Office of Emergency Medical Services, (202) 366–2705, *laurie.flaherty@dot.gov,* located at the United States Department of Transportation; 1200 New Jersey Avenue SE., NPD–400, Room W44–322, Washington, DC 20590.

b. In the third column, correct the second sentence of the second paragraph of the **SUPPLEMENTARY INFORMATION** caption to read:

> Models for a nationally uniform data system exist in other disciplines, for example, the National Fire Incident Reporting System (N–FIRS), *https://www.nfirs.fema.gov/,* and the National EMS Information System (NEMSIS), *http://nemsis.org.*

Dated: July 11, 2016.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–17207 Filed 7–21–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0077]

NHTSA Enforcement Guidance Bulletin 2016–03; Procedure for Invoking Paragraph 17 of the May 4, 2016 Amendment to the November 3, 2015 Takata Consent Order

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is issuing this Enforcement Guidance Bulletin to inform the public of the process and procedure the Agency has established in connection with Paragraph 17 of the May 4, 2016 Amendment to the November 3, 2015 Consent Order with TK Holdings Inc., and the standards and criteria that will guide Agency decision-making.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Elizabeth Mykytiuk, Office of the Chief Counsel, NCC–100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 366–5263).

For general information regarding NHTSA's investigation into Takata Air Bag Inflator ruptures and the related recalls: http://www.safercar.gov/rs/takata/index.html.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA or Agency) is issuing this Enforcement Guidance Bulletin (the "Bulletin") to inform the public of the circumstances under which NHTSA would consider invoking Paragraph 17 of the Agency's May 4, 2016 Amendment to the November 3, 2015 Consent Order with TK Holdings Inc. ("Takata") [1] to alter the recall schedule, as well as to provide guidance on the standards and criteria that would guide such decision-making.

I. Background

On June 11, 2014, NHTSA opened a formal defect investigation (Preliminary Evaluation, PE14–016) into certain Takata air bag inflators ("inflators") that may become over-pressurized and/or rupture during air bag deployment, resulting in death or injury to the driver and/or passenger. On February 24, 2015, NHTSA upgraded and expanded this investigation (Engineering Analysis, EA15–001).

Subsequently, Takata agreed to submit four Defect Information Reports (DIRs) on May 18, 2014, declaring that a defect existed in certain inflator types that were manufactured by Takata during certain periods of time. *See* Recall Nos. 15E–040, 15E–041, 15E–042, and 15E–043. Those DIRs triggered an obligation on the part of affected motor vehicle manufacturers to conduct a recall of motor vehicles containing the defective inflators. *See* 49 CFR 573.5(a).

On November 3, 2015, NHTSA issued, and Takata agreed to, a Consent Order, which among other things established conditions upon which Takata would be required to expand the scope of the defective inflator population by filing future DIRs. Again, the filing of such DIRs by Takata triggered an obligation by the motor vehicle manufacturers to submit DIRs covering the affected motor vehicles and to conduct a recall of motor vehicles in which the defective inflators are installed. *See* 49 CFR 573.3(f), 573.5(a); *see also* Coordinated Remedy Order at ¶ 46 (Nov. 3, 2015).

On May 4, 2016, NHTSA and Takata agreed to an Amendment to the November 3, 2015 Consent Order (the "Amendment"), under which Takata agreed to declare a defect in all driver and passenger inflators that contain an ammonium nitrate-based propellant, and do not contain a moisture-absorbing desiccant. The Amendment was based upon the findings of three independent research organizations that most of the inflator ruptures are associated with long-term propellant degradation caused by years of exposure to temperature fluctuations and intrusion of moisture present in the ambient atmosphere. *See* Amendment at ¶ 2. Based upon the Agency's conclusions regarding the root cause of the inflator ruptures, among other reasons, the recall is to be conducted on a rolling basis, with Takata filing additional DIRs on the following schedule (which is set forth in Paragraph 14 of the Amendment):

DIR dates	Zone A population	Zone B population	Zone C population
May 16, 2016	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2011 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2008 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2004 & older.
December 31, 2016	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2012 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2009 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2008 & older.
December 31, 2017	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2013 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2010 & older.	All vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators—MY 2009 & older.
December 31, 2018	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators.	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators.	All remaining vehicles not currently under recall containing non-desiccated frontal Takata PSAN inflators.
December 31, 2019	All like for like non-desiccated frontal Takata PSAN replacement parts.	All like for like non-desiccated frontal Takata PSAN replacement parts.	All like for like non-desiccated frontal Takata PSAN replacement parts.

As set forth in Paragraph 7.a. of the Amendment, Zone A comprises the states and U.S. territories with the greatest temperature cycling and absolute humidity. It includes the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands.

Zone B comprises states with moderate temperature cycling and absolute humidity. It includes the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.

Zone C comprises states with lower temperature cycling and absolute humidity. It includes the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

The Amendment also sets forth a procedure under which the DIR schedule above may be modified or amended. More specifically, Paragraph 17 provides:

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[1] The November 3, 2015 Consent Order and May 4, 2016 Amendment are available on NHTSA's Web site at *http://www.safercar.gov/rs/takata/index.html,* under the "Related Documents" hyperlink.

Based on the presentation of additional test data, analysis, or other relevant and appropriate evidence, by Takata, an automobile manufacturer, or any other credible source, NHTSA may, after consultation with Takata, alter the schedule set forth in Paragraph 14 to modify or amend a DIR or to defer certain inflator types or vehicles, or a portion thereof, to a later DIR filing date. Any such evidence must be submitted to NHTSA no later than one-hundred-twenty (120) days before the relevant DIR filing date. This paragraph applies only to the DIRs scheduled to be issued on or after December 31, 2016 under the schedule established by Paragraph 14 of this Amendment.

The Agency believes it is important to provide additional guidance on the process and conditions under which NHTSA would consider altering the recall schedule to modify or amend a DIR or defer the filing of a DIR, as well as guidance on the standards and criteria that would guide such decision-making. This process shall not be used to expedite or expand the DIR schedule, nor shall it be used to eliminate a population of vehicles from the recall.

II. Process and Procedure

A. *Petition:* No later than 120 days before the applicable DIR filing date, Takata, a vehicle manufacturer, or other credible source (the "petitioner") may petition the Agency for a modification or amendment to the DIR schedule. The petition shall be in writing and shall be directed to the Associate Administrator for Enforcement, with a copy to Chief Counsel. The petition shall specify the precise modification or amendment to the DIR schedule being requested by the petitioner, including the affected vehicle makes, models, and model years (the "particular class of vehicles"). The petition shall also set forth all data, information, and arguments of the petitioner supporting its petition. To the extent the petitioner requests confidential treatment under 49 CFR part 512 in connection with any data, information, and arguments, it shall submit a publicly available summary of such confidential materials.

B. *Public Notice and Comment:* Within 14 days of receiving a petition, NHTSA shall publish a notice of the petition in the **Federal Register**. The notice shall include a brief summary of the petition, a description of the particular class of vehicles, a statement of the availability of the petition and other relevant information for public inspection, and an invitation to interested persons to submit written data, information, and arguments concerning the petition to a public docket. The notice of the petition shall also specify the deadline for submitting data, information, and arguments concerning the petition, which deadline shall not be less than 14 days after the **Federal Register** notice.

C. *Disposition of the Petition:* After reviewing the written data, views, and arguments from the petitioner and any interested persons, as well as other available information, and after consulting with Takata, the Associate Administrator for Enforcement shall make a decision whether to grant or deny the petition. Notice of the grant or denial of the petition shall be issued to the petitioner, and to Takata and any affected vehicle manufacturer, no less than 45 days before the relevant DIR filing date. Notice of the grant or denial of the petition shall also be published in the **Federal Register**.

D. *Appeal:* Within 14 days of notice of a grant or denial in the **Federal Register**, any interested person may appeal the grant or denial of the petition to the Administrator. An appeal shall be in writing and shall be directed to the Administrator, with a copy to the Chief Counsel. The Administrator will base his final decision on the data, information, and arguments submitted in support of the petition and during the comment period, and other available information. The final decision will be issued no less than 5 days before the applicable DIR filing date. Notice of final decision shall also be published in the **Federal Register**.

III. Standard of Proof

NHTSA may grant the petition if the Agency finds that the written data, information, and arguments regarding the petition and other available information demonstrate, by a preponderance of the evidence, that either: (i) There has not yet been, nor will be for some period of years in the future, sufficient propellant degradation to render the inflators contained in the particular class of vehicles unreasonably dangerous in terms of susceptibility to rupture; or (ii) the service life expectancy of the inflators installed in the particular class of vehicles is sufficiently long that they will not pose an unreasonable risk to motor vehicle safety if recalled at a later date.

The Agency may rely on any relevant criteria in determining whether the available evidence satisfies the standard of proof. Generally, a petitioner may satisfy the standard of proof by submitting evidence concerning the physical attributes of the category of inflators at issue. Such evidence may include, but is not limited to, inflator diffusion rates, booster and propellant moisture content (over time), wafer diameter, and closed-bomb test data. In evaluating this evidence, the Agency will closely scrutinize the number of inflators tested, the age of the inflators tested, and the history of the vehicles from which the inflators were removed. A petitioner may also satisfy the standard of proof through robust predictive modeling, which modeling shall be independently verified by NHTSA's expert, Dr. Harold Blomquist. In all instances, a petition will be denied if there has been a rupture incident in the field or in testing that involves the inflator type contained in the particular class of vehicles at issue.

Applicability/Legal Statement: This Enforcement Guidance Bulletin sets forth NHTSA's current interpretation and thinking on the process and procedures under Paragraph 17 of the Amendment, and the standards and criteria that will guide its decision-making. This Bulletin is not a final agency action and is intended as guidance only. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the Department of Transportation, or the United States. Moreover, the process and procedures set forth herein do not establish any defense to any violations of the statutes and regulations that NHTSA administers. This Bulletin may be revised without notice to reflect changes in NHTSA's evaluation and analysis, or to clarify and update text.

Authority: 49 U.S.C. 30101, *et seq.*, 30118, 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 CFR 1.95(a).

Issued: July 15, 2016.

Mark R. Rosekind, Ph.D.

Administrator.

[FR Doc. 2016–17356 Filed 7–21–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Agency Information Collection (Pension Claim Questionnaire for Farm Income, VA Form 21P–4165); Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of

Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0095" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7474 or email *cynthia.harvey-pryor@va.gov* . Please refer to "OMB control No. 2900–0095."

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income, VA Form 21P–4165.

OMB Control Number: 2900–0095.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel and their survivors.

38 U.S.C. 1521 establishes a pension benefit for Veterans of a period of war who are permanently and totally disabled. 38 U.S.C. 1541 and 38 U.S.C. 1542 establish a survivor's pension benefit for the surviving dependents of Veterans of a period of war. Entitlement to pension benefits for Veterans and their surviving dependents is based on the family's countable annual income as required by 38 U.S.C. 1503 and net worth as required by 38 U.S.C. 1522.

The information collected on VA Form 21P–4165 will be used by VA to evaluate a claimant's income and net worth related to the operation of a farm for the purpose of establishing entitlement to pension benefits and to evaluate a beneficiary's ongoing entitlement to pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,038 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,075.

By direction of the Secretary:

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17336 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection: (Designation of Beneficiary) (29–336) Activity: Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0020" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0020."

SUPPLEMENTARY INFORMATION:

Title: Designation of Beneficiary, VA From 29–336.

OMB Control Number: 2900–0020.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–336 is used by the insured to designate a beneficiary and select an optional settlement to be used when the insurance matures by death. This information is required to determine the claimant's eligibility to receive the processed. The information on the form is request by la, 38 U.S.C. Sections 1917, 1949, and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 15151–15152 on March 21, 2016.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 83,500.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17338 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Proposed Information Collection (VA Loan Electronic Reporting Interface (VALERI) System); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0021" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Loan Electronic Reporting Interface (VALERI) System.

OMB Control Number: 2900–0021.

Type of Review: Revision of a currently approved collection.

Abstract: VA conducted an in-depth internal review of the entire Loan Administration process. As a result of this review, VA changed previous procedures which include: Collections of information and record retention related to the increased authority of servicers to implement loss-mitigation options; processing of loan modifications; increased information reporting requirements for servicers; elimination of currently-required Notices of Intention to Foreclose; reduction in the amount of documentation provided to VA incident to refunding loans; significant reduction in reporting and recordkeeping burdens pertaining to legal proceedings, including bankruptcies and foreclosures; changes in the way servicers are permitted to file an election to convey properties to VA; provisions permitting claims to be filed electronically instead of paper submission; authorizing certain servicers to process releases of liability and partial releases; and permitting certain servicers the authority to process liquidation appraisals instead of VA and its appraisers.

Affected Public: Individuals or households.

Estimated Annual Burden: 70 hours.

Estimated Average Burden per Respondent: 1 second.

Frequency of Response: One-time.

Estimated Number of Respondents: 260.

By direction of the Secretary:

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17335 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Agency Information Collection (Loan Service Report) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0249" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0249."

SUPPLEMENTARY INFORMATION:

Title: Loan Service Report.

OMB Control Number: 2900–0249.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6808 is used when servicing delinquent guaranteed and insured loans and loans sold under 38 CFR 36.4600. With respect to the servicing of guaranteed and insured home loans and loans sold under 38 CFR 36.4600, the holder has the primary servicing responsibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 11050 on May 11, 2016.

Affected Public: Individuals or households.

Estimated Annual Burden: 2083 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17337 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection (Monthly Certification of Flight Training VA Form 22–6553c) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0162" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0162."

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of Flight Training.

OMB Control Number: 2900–0162.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training completed during the month. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 28, 2016, at page 17246.

Affected Public: Individuals or households.

Estimated Annual Burden: 7728 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: 6 annually.

Estimated Number of Respondents: 15456.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17339 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Agency Information Collection (Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application) (VA Form 26–1802A) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0144" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0144."

SUPPLEMENTARY INFORMATION:

Title: Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application.

OMB Control Number: 2900–0144.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–1802a, Department of Housing and Urban Development (HUD)/Department of Veterans Affairs (VA) Addendum to Uniform Residential Loan Application, serve as the lender's and veteran's application for home loans authorized by 38 U.S.C. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at Vol. 81, No. 64, Monday, April 4, 2016, page 19291.

Affected Public: Individuals or households.

Estimated Annual Burden: 35,000 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 350,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17344 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Proposed Information Collection (Acquisition Regulation (VAAR) Clause 852.211–73, Brand Name or Equal) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Ricky L. Clark, Office of Acquisition and

Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *Ricky.clark@va.gov.* Please refer to "OMB Control No. 2900–0585" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Ricky Clark at (202) 632–5400, Fax (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

Titles: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–73, Brand Name or Equal.

OMB Control Number: 2900–0585.

Type of Review: Extension without change of a previously approved collection.

Abstract: VAAR clause 852.211–73 advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,750.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Enterprise Records Management Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17340 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting; Amendment

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Special Medical Advisory Group will meet on September 1, 2016, at the VHA National Conference Center, 2011 Crystal Drive, Arlington, VA 22202 from 8 a.m. to 4 p.m. EST in the Potomac A Room. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include a review of Commission on Care, Center for Compassionate Innovation (CCI), VA Innovation Center & Innovation Fellows, Strategic Partnerships and Rebuilding Relationships with IBM Watson and Google Deep Mind.

Thirty (30) minutes will be allocated for receiving oral presentations from the public. Members of the public may submit written statements for review by the Committee to Dr. Donna Wells-Taylor, Department of Veterans Affairs, Office of Patient Care Services (10P4), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *donna.wells-taylor@va.gov.*

Because the meeting is being held in the VHA National Conference Center, a photo I.D. is required at the entrance as a part of the clearance process. Therefore, you should plan to arrive 15 minutes before the meeting begins to allow time for the clearance process. Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Donna Wells-Taylor at (202) 461–1025 or by email.

Dated: July 19, 2016.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–17363 Filed 7–21–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0696]

Proposed Information Collection (Availability of Educational, Licensing, and Certification Records); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0696" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Availability of Educational, Licensing, and Certification Records.

OMB Control Number: 2900–0696.

Type of Review: Revision of a currently approved collection.

Abstract: Educational institutions (including licensing and certification organizations) with approved courses or tests must make records available to government representatives. These records are used to insure that payment of benefits under the education programs VA administers have been made correctly.

Affected Public: Educational Institutions.

Estimated Annual Burden: 11,400 hours.

Estimated Average Burden per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,700.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17343 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection (Claim for One Sum Payment Government Life Insurance (VA Form 29–4125) and Claim for Monthly Payments Government Life Insurance (29–4125a)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before *August 22, 2016.*

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0060" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0060."

SUPPLEMENTARY INFORMATION:

Title:

Claim for One Sum Payment Government Life Insurance (29–4125)

Claim for Monthly Payments Government Life Insurance (29–4125a)

OMB Control Number: 2900–0060.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by beneficiaries applying for proceeds of Government Life Insurance policies. The information requested on the forms is required by law, 38 U.S.C. Sections 1917 and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 57, page 15789, March 24, 2016.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,000 hours (VA Form 29–4125) and 10 hours (VA Form 29–4125a).

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120,000 (VA Form 29–4125) and 100 (VA Form 29–4125a).

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17342 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0698]

Proposed Information Collection (Application for Educational Assistance To Supplement Tuition Assistance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine claimants' eligibility for educational assistance to supplement tuition assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0698" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Educational Assistance to Supplement Tuition Assistance, 38 CFR 21.1030(c), 21.7140(c)(5).

OMB Control Number: 2900–0698.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants who wish to receive educational assistance administered by VA to supplement tuition assistance administered by the Department of Defense must apply through VA. VA will use the data collected to determine the claimant's eligibility to receive educational assistance to supplement the tuition assistance he or she received and the amount payable.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,600 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–17341 Filed 7–21–16; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1041
Payday, Vehicle Title, and Certain High-Cost Installment Loans; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1041

[Docket No. CFPB-2016-0025]

RIN 3170-AA40

Payday, Vehicle Title, and Certain High-Cost Installment Loans

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to establish 12 CFR 1041, which would contain regulations creating consumer protections for certain consumer credit products. The proposed regulations would cover payday, vehicle title, and certain high-cost installment loans.

DATES: Comments must be received on or before October 7, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2016-0025 or RIN 3170-AA40, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB-2016-0025 or RIN 3170-AA40 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Eleanor Blume, Sarita Frattaroli, Casey Jennings, Sandeep Vaheesan, Steve Wrone, Counsels; Daniel C. Brown, Mark Morelli, Michael G. Silver, Laura B. Stack, Senior Counsels, Office of Regulations, at 202-435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau is issuing this notice to propose consumer protections for payday loans, vehicle title loans, and certain high-cost installment loans (collectively "covered loans"). Covered loans are typically used by consumers who are living paycheck to paycheck, have little to no access to other credit products, and seek funds to meet recurring or one-time expenses. The Bureau has conducted extensive research on these products, in addition to several years of outreach and review of the available literature. The Bureau is proposing to issue regulations primarily pursuant to authority under section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to identify and prevent unfair, deceptive, and abusive acts and practices.[1] The Bureau is also using authorities under section 1022 of the Dodd-Frank Act to prescribe rules and make exemptions from such rules as is necessary or appropriate to carry out the purposes and objectives of the consumer Federal consumer financial laws,[2] section 1024 of the Dodd-Frank Act to facilitate supervision of certain non-bank financial service providers,[3] and section 1032 of the Dodd-Frank Act to require disclosures to convey the costs, benefits, and risks of particular consumer financial products or services.[4]

The Bureau is concerned that lenders that make covered loans have developed business models that deviate substantially from the practices in other credit markets by failing to assess consumers' ability to repay their loans and by engaging in harmful practices in the course of seeking to withdraw payments from consumers' accounts. The Bureau believes that there may be a high likelihood of consumer harm in connection with these covered loans because many consumers struggle to repay their loans. In particular, many consumers who take out covered loans appear to lack the ability to repay them and face one of three options when an unaffordable loan payment is due: take out additional covered loans, default on the covered loan, or make the payment on the covered loan and fail to meet other major financial obligations or basic living expenses. Many lenders may seek to obtain repayment of covered loans directly from consumers' accounts. The Bureau is concerned that consumers may be subject to multiple fees and other harms when lenders make repeated unsuccessful attempts to withdraw funds from consumers' accounts.

A. Scope of the Proposed Rule

The Bureau's proposal would apply to two types of covered loans. First, it would apply to short-term loans that have terms of 45 days or less, including typical 14-day and 30-day payday loans, as well as short-term vehicle title loans that are usually made for 30-day terms. Second, the proposal would apply to longer-term loans with terms of more than 45 days that have (1) a total cost of credit that exceeds 36 percent; and (2) either a lien or other security interest in the consumer's vehicle or a form of "leveraged payment mechanism" that gives the lender a right to initiate transfers from the consumer's account or to obtain payment through a payroll deduction or other direct access to the consumer's paycheck. Included among covered longer-term loans is a subcategory loans with a balloon payment, which require the consumer to pay all of the principal in a single payment or make at least one payment that is more than twice as large as any other payment.

The Bureau is proposing to exclude several types of consumer credit from the scope of the proposal, including: (1) Loans extended solely to finance the purchase of a car or other consumer good in which the good secures the loan; (2) home mortgages and other loans secured by real property or a dwelling if recorded or perfected; (3) credit cards; (4) student loans; (5) non-recourse pawn loans; and (6) overdraft services and lines of credit.

B. Proposed Ability-to-Repay Requirements and Alternative Requirements for Covered Short-Term Loans

The proposed rule would identify it as an abusive and unfair practice for a lender to make a covered short-term loan without reasonably determining that the consumer will have the ability to repay the loan.[5] The proposed rule would prescribe requirements to prevent the practice. A lender, before making a covered short-term loan, would have to make a reasonable determination that the consumer would be able to make the payments on the loan and be able to meet the consumer's other major financial obligations and basic living expenses without needing to reborrow over the ensuing 30 days. Specifically, a lender would have to:

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[1] Public Law 111-203, section 1031(b), 124 Stat. 1376 (2010) (hereinafter Dodd-Frank Act).

[2] Dodd-Frank Act section 1022(b).

[3] Dodd-Frank Act section 1024(b)(7).

[4] Dodd-Frank Act section 1032(a).

- Verify the consumer's net income;
- verify the consumer's debt obligations using a national consumer report and a consumer report from a "registered information system" as described below;
- verify the consumer's housing costs or use a reliable method of estimating a consumer's housing expense based on the housing expenses of similarly situated consumers;
- forecast a reasonable amount of basic living expenses for the consumer—expenditures (other than debt obligations and housing costs) necessary for a consumer to maintain the consumer's health, welfare, and ability to produce income;
- project the consumer's net income, debt obligations, and housing costs for a period of time based on the term of the loan; and
- determine the consumer's ability to repay the loan based on the lender's projections of the consumer's income, debt obligations, and housing costs and forecast of basic living expenses for the consumer.

A lender would also have to make, under certain circumstances, additional assumptions or presumptions when evaluating a consumer's ability to repay a covered short-term loan. The proposal would specify certain assumptions for determining the consumer's ability to repay a line of credit that is a covered short-term loan. In addition, if a consumer seeks a covered short-term loan within 30 days of a covered short-term loan or a covered longer-term loan with a balloon payment, a lender generally would be required to presume that the consumer is not able to afford the new loan. A lender would be able to overcome the presumption of unaffordability for a new covered short-term loan only if it could document a sufficient improvement in the consumer's financial capacity. Furthermore, a lender would be prohibited from making a covered short-term loan to a consumer who has already taken out three covered short-term loans within 30 days of each other.

A lender would also be allowed to make a covered short-term loan, without making an ability-to-repay determination, so long as the loan satisfies certain prescribed terms and the lender confirms that the consumer met specified borrowing history conditions and provides required disclosures to the consumer. Among other conditions, a lender would be allowed to make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. In addition, a lender would not be allowed to make a covered short-term loan under the alternative requirements if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period. A lender would not be permitted to take vehicle security in connection with these loans.

C. Proposed Ability-to-Repay Requirements and Alternative Requirements for Covered Longer-Term Loans

The proposed rule would identify it as an abusive and unfair practice for a lender to make a covered longer-term loan without reasonably determining that the consumer will have the ability to repay the loan. The proposed rule would prescribe requirements to prevent the practice. A lender, before making a covered longer-term loan, would have to make a reasonable determination that the consumer has the ability to make all required payments as scheduled. The proposed ability-to-repay requirements for covered longer-term loans closely track the proposed requirements for covered short-term loans with an added requirement that the lender, in assessing the consumer's ability to repay a longer term loan, reasonably account for the possibility of volatility in the consumer's income, obligations, or basic living expenses during the term of the loan.

A lender would also have to make, under certain circumstances, additional assumptions or presumptions when evaluating a consumer's ability to repay a covered longer-term loan. The proposal would specify certain assumptions for determining the consumer's ability to repay a line of credit that is a covered longer-term loan. In addition, if a consumer seeks a covered longer-term loan within 30 days of a covered short-term loan or a covered longer-term balloon-payment loan, the lender would, under certain circumstances, be required to presume that the consumer is not able to afford a new loan. A presumption of unaffordability also generally would apply if the consumer has shown or expressed difficulty in repaying other outstanding covered or non-covered loans made by the same lender or its affiliate. A lender would be able to overcome the presumption of unaffordability for a new covered longer-term loan only if it could document a sufficient improvement in the consumer's financial capacity.

A lender would also be permitted to make a covered longer-term loan without having to satisfy the ability-to-repay requirements by making loans under a conditional exemption modeled on the National Credit Union Administration's (NCUA) Payday Alternative Loan (PAL) program. Among other conditions, a covered longer-term loan under this exemption would be required to have a principal amount of not less than $200 and not more than $1,000, fully amortizing payments, and a term of at least 46 days but not longer than six months. In addition, loans made under this exemption could not have an interest rate more that is more than the interest rate that is permitted for Federal credit unions to charge under the PAL regulations and an application fee of more than $20.

A lender would also be permitted to make a covered longer-term loan, without having to satisfy the ability-to-repay requirements, so long as the covered longer-term loan meets certain structural conditions. Among other conditions, a covered longer-term loan under this exemption would be required to have fully amortizing payments and a term of at least 46 days but not longer than 24 months. In addition, to qualify for this conditional exemption, a loan must carry a modified total cost of credit of less than or equal to an annual rate of 36 percent, from which the lender could exclude a single origination fee that is no more than $50 or that is reasonably proportionate to the lender's costs of underwriting. The projected annual default rate on all loans made pursuant to this conditional exemption must not exceed 5 percent. The lender would have to refund all of the origination fees paid by all borrowers in any year in which the annual default rate of 5 percent is exceeded.

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[5] This is a notice of proposed rulemaking, so the Bureau's statements herein regarding this and other proposed identifications of unfair and abusive practices, including the necessary elements of such identifications, are provisional only. The Bureau is not herein finding that such elements have been satisfied and identifying unfair and abusive practices.

D. Proposed Payments Practices Rules

The proposed rule would identify it as an abusive and unfair practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains from the consumer a new and specific authorization to make further withdrawals from the account. This prohibition on further withdrawal attempts would apply whether the two failed attempts are initiated through a single payment channel or different channels, such as the automated clearinghouse system and the check network. The proposed rule would require that lenders provide notice to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

In addition to the requirements related to the prohibition on further payment withdrawal attempts, a lender would be required to provide a written notice at least three business days before each attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. The notice would contain key information about the upcoming payment attempt, and, if applicable, alert the consumer to unusual payment attempts. A lender would be permitted to provide electronic notices so long as the consumer consents to electronic communications.

E. Additional Requirements

The Bureau is proposing to require lenders to furnish to registered information systems basic information for most covered loans at origination, any updates to that information over the life of the loan, and certain information when the loan ceases to be outstanding. The registered information systems would have to meet certain eligibility criteria prescribed in the proposed rule. The Bureau is proposing a sequential process that it believes would ensure that information systems would be registered and lenders ready to furnish at the time the furnishing obligation in the proposed rule would take effect. For most covered loans, registered information systems would provide a reasonably comprehensive record of a consumer's recent and current borrowing. Before making most covered loans, a lender would be required to obtain and review a consumer report from a registered information system.

A lender would be required to establish and follow a compliance program and retain certain records. A lender would be required to develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements in this proposal. Furthermore, a lender would be required to retain the loan agreement and documentation obtained for a covered loan, and electronic records in tabular format regarding origination calculations and determinations for a covered loan, for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan, and regarding loan type and terms. The proposed rule also would include an anti-evasion clause.

F. Effective Date

The Bureau is proposing that, in general, the final rule would become effective 15 months after publication of the final rule in the **Federal Register.** The Bureau is proposing that certain provisions necessary to implement the consumer reporting components of the proposal would become effective 60 days after publication of the final rule in the **Federal Register** to facilitate an orderly implementation process.

II. Background

A. Introduction

For most consumers, credit provides a means of purchasing goods or services and spreading the cost of repayment over time. This is true of the three largest consumer credit markets: The market for mortgages ($9.99 trillion in outstanding balances), for student loans ($1.3 trillion), and for auto loans ($1 trillion). This is also one way in which certain types of open-end credit—including home equity loans ($0.14 trillion) and lines of credit ($0.51 trillion)—and at least some credit cards and revolving credit ($0.9 trillion)—can be used.[6]

Consumers living paycheck to paycheck and with little to no savings have also used credit as a means of coping with shortfalls. These shortfalls can arise from mismatched timing between income and expenses, misaligned cash flows, income volatility, unexpected expenses or income shocks, or expenses that simply exceed income.[7] Whatever the cause of the shortfall, consumers in these situations sometimes seek what may broadly be termed a "liquidity loan."[8] There are a variety of loans and products that consumers use for these purposes including credit cards, deposit account overdraft, pawn loans, payday loans, vehicle title loans, and installment loans.

Credit cards and deposit account overdraft services are each already subject to specific Federal consumer protection regulations and requirements. The Bureau generally considers these markets to be outside the scope of this rulemaking as discussed further below. The Bureau is also separately engaged in research and evaluation of potential rulemaking actions on deposit account overdraft.[9]

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[6] For mortgages (one- to four-family) see Bd. of Governors of the Fed. Reserve Sys., *Mortgage Debt Outstanding (1.54)* (Release Date Mar. 2016), *available at http://www.federalreserve.gov/econresdata/releases/mortoutstand/current.htm*; for student loans, auto loans, and revolving credit, see Bd. of Governors of the Fed. Reserve Sys., *Consumer Credit-G.19 February 2016* (Release Date Apr. 2016), *available at http://www.federalreserve.gov/releases/g19/current/default.htm#fn11b.* Home equity loans and lines of credit outstanding estimate derived from Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Home Equity Loans Report,* at 16 fig. 21 (2016), *available at http://www.marketintelligencereports.com* and Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report Market Intelligence Report: Home Equity Lines Report,* at 21 fig. 30 (2016), *available at http://www.marketintelligencereports.com.*

[7] For a general discussion, see Rob Levy & Joshua Sledge, Ctr. for Fin. Servs. Innovation, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers* (2012), *available at https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf.*

[8] If a consumer's expenses consistently exceed income, a liquidity loan is not likely to be an appropriate solution to the consumer's needs.

[9] Credit cards and deposit overdraft services would be excluded from the proposed rule under proposed § 1041.3(e)(3) and (6) as discussed further below. The Bureau is engaged in a separate rulemaking concerning credit offered in connection with prepaid accounts and has proposed to treat such products generally as credit cards. *See* 79 FR 77102 (Dec. 23, 2014). The Bureau has issued a Notice and Request for Information on the Impacts of Overdraft Programs on Consumers and has indicated that it is preparing for a separate rulemaking that will address possible consumer protection concerns from overdraft services. *See* 77 FR 12031-12034 (Feb. 28, 2012); Kelly Cochran, *Spring 2016 Rulemaking Agenda,* CFPB Blog (May 18, 2016), *http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/.* In 2015, banks with over $1 billion in assets reported overdraft and NSF (nonsufficient funds) fee revenue of $11.16 billion. *See* Gary Stein, *New Insights on Bank Overdraft Fees and 4 Ways to Avoid Them,* CFPB Blog (Feb. 25, 2016), *http://www.consumerfinance.gov/blog/new-insights-on-bank-overdraft-fees-and-4-ways-to-avoid-them/.* The $11.16 billion total does not include credit union fee revenue and does not separate out overdraft from NSF amounts but overall, overdraft fee revenue accounts for about 72 percent of that amount. Bureau of Consumer Fin. Prot., *Data Point: Checking Account Overdraft,* at 10 (2014) *[hereinafter CFPB Data Point: Checking Account Overdraft], available at http://files.consumerfinance.gov/f/201407_cfpb_report_*

Another liquidity option—pawn—generally involves non-recourse loans made against the value of whatever item a consumer chooses to give the lender in return for the funds.[10] The consumer has the option to either repay the loan or permit the pawnbroker to retain and sell the pawned property at the end of the loan term, relieving the borrower from any additional financial obligation. This feature distinguishes pawn loans from most other types of liquidity loans. The Bureau is proposing to exclude non-recourse possessory pawn loans, as described in proposed § 1041.3(e)(5), from the scope of this rulemaking.

This rulemaking is focused on two general categories of liquidity loan products: Short-term loans and certain higher-cost longer-term loans. The largest category of short-term loans are "payday loans," which are generally required to be repaid in a lump-sum single-payment on receipt of the borrower's next income payment, and short-term vehicle title loans, which are also almost always due in a lump-sum single-payment, typically within 30 days after the loan is made. The second general category consists of certain higher-cost longer-term loans. It includes both what are often referred to as "payday installment loans"—that is, loans that are repaid in multiple installments with each installment typically due on the borrower's payday or regularly-scheduled income payment and with the lender generally having the ability to automatically collect payments from an account into which the income payment is deposited—and vehicle title installment loans. In addition, the latter category includes higher cost, longer-term loans in which the principal is not amortized but is scheduled to be paid off in a large lump sum payment after a series of smaller, often interest-only, payments. Some of these loans are available at storefront locations, others are available on the internet, and some loans are available through multiple delivery channels. This rulemaking is not limited to closed-end loans but includes open-end lines of credit as well.[11] It also includes short-term products and some more traditional installment loans made by some depository institutions and by traditional finance companies.

As described in more detail in part III, the Bureau has been studying these markets for liquidity loans for over four years, gaining insights from a variety of sources. During this time the Bureau has conducted supervisory examinations of a number of payday lenders and enforcement investigations of a number of different types of liquidity lenders, which have given the Bureau insights into the business models and practices of such lenders. Through these processes, and through market monitoring activities, the Bureau also has obtained extensive loan-level data that the Bureau has studied to better understand risks to consumers.[12] The Bureau has published four reports based upon these data, and, concurrently with the issuance of this Notice of Proposed Rulemaking, the Bureau is releasing a fifth report.[13] The Bureau has also carefully reviewed the published literature with respect to small-dollar liquidity loans and a number of outside researchers have presented their research at seminars for Bureau staff. In addition, over the course of the past four years the Bureau has engaged in extensive outreach with a variety of stakeholders in both formal and informal settings, including several Bureau field hearings across the country specifically focused on the subject of small-dollar lending, meetings with the Bureau's standing advisory groups, meetings with State and Federal regulators, meetings with consumer advocates, religious groups, and industry trade associations, consultations with Indian tribes, and through a Small Business Review Panel process as described further below.

This Background section provides a brief description of the major components of the markets for both short-term loans and certain higher-cost longer-term loans, describing the product parameters, industry size and structure, lending practices, and business models of each component. It then goes on to describe recent State and Federal regulatory activity in connection with these product markets. Market Concerns—Short-Term Loans and Market Concerns—Longer-Term Loans below, provide a more detailed description of consumer experiences with short-term loans and certain higher-cost longer-term loans, describing research about which consumers use the products, why they

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data-point_overdrafts.pdf. The Federal Reserve Board adopted a set of regulations of overdraft services and the Bureau has published two overdraft research reports on overdraft. *See* Regulation E, 75 FR 31665 (Jun. 4, 2010), *available at https://www.gpo.gov/fdsys/pkg/FR-2010-06-04/pdf/2010-13280.pdf*; Bureau of Consumer Fin. Prot., *CFPB Study of Overdraft Programs: A White Paper of Initial Data Findings,* (2013), [hereinafter *CFPB Study of Overdraft Programs White Paper*], *available at http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf*; *CFPB Data Point: Checking Account Overdraft*.

[10] Pawn lending, also known as pledge lending, has existed for centuries, with references to it in the Old Testament; pawn lending in the U.S. began in the 17th century. *See* Susan Payne Carter, *Payday Loan and Pawnshop Usage: The Impact of Allowing Payday Loan Rollovers,* at 5 (2012), *available at https://my.vanderbilt.edu/susancarter/files/2011/07/Carter_Susan_JMP_Website2.pdf*. Pawn revenue for 2014 was estimated at $6.3 billion. EZCORP, *EZCORP 2014 Institutional Investor Day,* at 31 (Dec. 11, 2014), *available at http://investors.ezcorp.com/index.php?s=65&item=87*. The three largest pawn firms, Cash America, EZCorp, and First Cash Financial Services, accounted for about one-third of total industry revenue but only 13 percent of the over 11,000 storefronts, that are operated by over 5,000 firms. *Id.;* First Cash Financial Services Inc., 2015 Annual Report (Form 10-K), at 1, 33 (Feb. 17, 2016), *available at https://www.sec.gov/Archives/edgar/data/840489/000084048916000076/fcfs1231201510-k.htm;* EZCORP, Inc., 2015 Annual Report (Form 10-K), at 4, 21 (Dec. 23, 2015), *available at* (*https://www.sec.gov/Archives/edgar/data/876523/000087652315000120/a201510-k.htm*), and Cash America International, Inc., 2015 Annual Report (Form 10-K), at 2, 36 (Feb. 25, 2016), *available at https://www.sec.gov/Archives/edgar/data/807884/000080788416000055/0000807884-16-000055-index.htm*. On April 28, 2016, First Cash Financial Services and Cash America announced they had entered into a merger agreement. The resulting company, FirstCash will operate in 26 States. Press Release, "First Cash Financial Services and Cash America International to Combine in Merger of Equals to Create Leading Operator of Retail Pawn Stores in the United States and Latin America" (Apr. 28, 2016), *available at http://ww2.firstcash.com/sites/default/files/20160428_PR_M.pdf*. Revenue calculations for each firm were made by taking the percentage of total revenue associated with pawn lending activity. For more about pawn lending in general, see John P. Caskey, *Fringe Banking: Cash-Checking Outlets, Pawnshops, and the Poor,* at ch. 2 (1994).

[11] The Dodd-Frank Act does not define "payday loans," and the Bureau is not proposing to do so in this rulemaking. The Bureau may do so in a subsequent rulemaking or in another context. In addition, the Bureau notes that various State, local, and tribal jurisdictions may define "payday loans" in ways that may be more or less coextensive with the coverage of the Bureau's proposal.

[12] Information underlying this proposed rule is derived from a variety of sources, including from market monitoring and outreach, third-party studies and data, consumer complaints, the Bureau's enforcement and supervisory work, and the Bureau's expertise generally. In publicly discussing information, the Bureau has taken steps not to disclose confidential information inappropriately and to otherwise comply with applicable law and its own rules regarding disclosure of records and information. *See* 12 CFR 1070.41(c).

[13] Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings,* (2013) [hereinafter *CFPB Payday Loans and Deposit Advance Products White Paper*], *available at http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf*; Bureau of Consumer Fin. Prot., *CFPB Data Point: Payday Lending,* (2014) [hereinafter *CFPB Data Point: Payday Lending*], *available at http://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf*; Bureau of Consumer Fin. Prot., *Online Payday Loan Payments* (2016) [hereinafter *CFPB Online Payday Loan Payments*], *available at http://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf;* Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending* (2016) [hereinafter *CFPB Single-Payment Vehicle Title Lending*], *available at http://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf*; Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products* (2016) [hereinafter *CFPB Report on Supplemental Findings*].

use the products, and the outcomes they experience as a result of the product structures and industry practices.

B. Single-payment and Other Short-Term Loans

At around the beginning of the twentieth century, concern arose with respect to companies that were responding to liquidity needs by offering to "purchase" a consumer's paycheck in advance of it being paid. These companies charged fees that, if calculated as an annualized interest rate, were as high as 400 percent.[14] To address these concerns, between 1914 and 1943, 34 States enacted a form of the Uniform Small Loan Law, which was a model law developed by the Russell Sage Foundation. That law provided for lender licensing and permitted interest rates of between 2 and 4 percent per month, or 24 to 48 percent per year. Those rates were substantially higher than pre-existing usury limits (which generally capped interest rates at between 6 and 8 percent per year) but were viewed by proponents as "equitable to both borrower and lender." [15]

New forms of short-term small-dollar lending appeared in several States in the 1990s,[16] starting with check cashing outlets that would hold a customer's personal check for a period of time for a fee before cashing it ("check holding" or "deferred presentment").[17] Several market factors had converged around the same time. Consumers were using credit cards more frequently for short-term liquidity lending needs, a trend that continues today.[18] Storefront finance companies, described below in part II.C that had provided small loans changed their focus to larger, collateralized products, including vehicle financing and real estate secured loans. At the same time there was substantial consolidation in the storefront installment lending industry. Depository institutions similarly moved away from short-term small-dollar loans.

Around the same time, a number of State legislatures amended their usury laws to allow lending by a broader group of both depository and non-depository lenders by increasing maximum allowable State interest rates or eliminating State usury laws, while other States created usury carve-outs or special rules for short-term loans.[19] The confluence of these trends has led to the development of markets offering what are commonly referred to as payday loans (also known as cash advance loans, deferred deposit, and deferred presentment loans depending on lender and State law terminology), and short-term vehicle title loans that are much shorter in duration than vehicle-secured loans that have traditionally been offered by storefront installment lenders and depository institutions. Although payday loans initially were distributed through storefront retail outlets, they are now also widely available on the internet. Vehicle title loans are typically offered exclusively at storefront retail outlets.

These markets as they have evolved over the last two decades are not strictly segmented. There is substantial overlap between market products and the borrowers who use them. For example, in a 2013 survey, almost 18 percent of U.S. households that had used a payday loan in the prior year had also used a vehicle title loan.[20] There is also an established trend away from "monoline" or single-product lending companies. Thus, for example, a number of large payday lenders also offer vehicle title and installment loans.[21] The following discussion nonetheless provides a description of major product types.

Storefront Payday Loans

The market that has received the greatest attention among policy makers, advocates, and researchers is the market for single-payment payday loans. These payday loans are short-term small-dollar loans generally repayable in a single payment due when the consumer is scheduled to receive a paycheck or other inflow of income (*e.g.*, government benefits).[22] For most borrowers, the loan is due in a single payment on their payday, although State laws with minimum loan terms—seven days for example—or lender practices may affect the loan duration in individual cases. The Bureau refers to these short-term payday loans available at retail locations as "storefront payday loans," but the requirements for borrowers taking online payday loans are generally similar, as described below. There are now 36 States that either have created a carve-out from their general usury cap for payday loans or have no usury caps on consumer loans.[23] The remaining 14

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[14] Salary advances were structured as wage assignments rather than loans to evade much lower State usury caps of about 8 percent per annum or less. *See* John P. Caskey, *Fringe Banking and the Rise of Payday Lending,* in Credit Markets for the Poor 17, 23 (Patrick Bolton & Howard Rosenthal eds., 2005).

[15] Elisabeth Anderson, *Experts, Ideas, and Policy Change: The Russell Sage Foundation and Small Loan Reform, 1909-1941,* 37 Theory & Soc'y 271, 276, 283, 285 (2008), *available at http://www.jstor.org/stable/40211037* (quoting Arthur Ham, Russell Sage Foundation, Feb. 1911, Quarterly Report, Library of Congress Russell Sage Foundation Archive, Box 55).

[16] *A Short History of Payday Lending Law,* The Pew Charitable Trusts (July 18, 2012), *http://www.pewtrusts.org/en/research-and-analysis/analysis/2012/07/a-short-history-of-payday-lending-law.*

[17] *See, e.g.,* Adm'r of the Colo. Unif. Consumer Credit Code, Colo. Dep't of Law, Administrative Interpretation No. 3.104-9201, *Check Cashing Entities Which Provide Funds In Return For A Post-Dated Check Or Similar Deferred Payment Arrangement And Which Impose A Check Cashing Charge Or Fee May Be Consumer Lenders Subject To The Colorado Uniform Consumer Credit Code* (June 23, 1992) (on file).

[18] Robert D. Manning, *Credit Card Nation: The Consequences of America's Addiction to Credit* (Basic Books 2000); Amy Traub, Demos, *Debt Disparity: What Drives Credit Card Debt in America,* (2014), *available at http://www.demos.org/sites/default/files/publications/DebtDisparity_1.pdf*)

[19] Pew Charitable Trusts, *A Short History of Payday Lending Law.* This piece notes that State legislative changes were in part a response to the ability of federally- and State-chartered banks to lend without being subject to the usury laws of the borrower's State.

[20] Data derived from Appendix D—Alternative Financial Services: National Tables. Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at 57-93 (2014), *available at https://www.fdic.gov/householdsurvey/2013appendix.pdf.*

[21] See for example, Advance America; Cash America Pawn; Check Into Cash; Community Choice Financial/CheckSmart; Speedy Cash; PLS Financial Services and Money Tree Inc. *Title Loans,* Advance America, *https://www.advanceamerica.net/services/title-loans; Auto Title Loans* (last visited Mar. 3, 2016); *Auto Title Loans,* Cash America Pawn, *http://www.cashamerica.com/LoanOptions/AutoTitleLoans.aspx)* (last visited Mar. 3, 2016); *Our Process & Information,* Check Into Cash, *https://checkintocash.com/title-loans/* (last visited Mar. 3, 2016); Title Loans, Community Choice Financial/CheckSmart, *http://www.checksmartstores.com/utah/title-loans/* (last visited Mar. 3, 2016); *Title Loans, Speedy Cash, https://www.speedycash.com/title-loans/* (last visited Mar. 3, 2016); *Auto Title Loans,* PLS Financial Services, *http://www.pls247.com/ms/loans/auto-title-loans.html* (last visited Mar. 3, 2016). Moneytree offers vehicle title and installment loans in Idaho and Nevada. *Idaho Products,* Money Tree Inc., *https://www.moneytreeinc.com/loans/idaho* (last visited Mar. 3, 2016); *Nevada Products,* Money Tree Inc., *https://www.moneytreeinc.com/loans/nevada* (last visited Mar. 3, 2016).

[22] For convenience, this discussion refers to the next scheduled inflow of income as the consumer's next "payday" and the inflow itself as the consumer's "paycheck" even though these are misnomers for consumers whose income comes from government benefits.

[23] For a list of States see, *State Payday Loan Regulation and Usage Rates,* The Pew Charitable Trusts (Jan. 14, 2014), *http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates.* One source lists 35 States as authorizing payday lending. Susanna Montezemolo, Ctr. for Responsible Lending, *The State of Lending in America & Its Impact on U.S. Households: Payday Lending Abuses and Predatory Practices,* at 32-33 (2013), *available at http://www.responsiblelending.org/sites/default/files/uploads/10-payday-loans.pdf.* Another public compilation lists 32 States as having authorized or allowed payday lending. *See* Consumer Fed'n of Am., *Legal Status of Payday Loans by State, http://www.paydayloaninfo.org/state-information* (last visited Apr. 6, 2016).

States and the District of Columbia either ban payday loans or have fee or interest rate caps that payday lenders apparently find too low to sustain their business models. As discussed further below, several of these States previously had authorized payday lending but subsequently changed their laws.

Product definition and regulatory environment. As noted above, payday loans are typically repayable in a single payment on the borrower's next payday. In order to help ensure repayment, in the storefront environment the lender generally holds the borrower's personal check made out to the lender—usually post-dated to the loan due date in the amount of the loan's principal and fees—or the borrower's authorization to electronically debit the funds from her checking account, commonly known as an automated clearing house (ACH) transaction.[24] Payment methods are described in more detail below in part II.D.

Payday loan sizes vary depending on State law limits, individual lender credit models, and borrower demand. Many States set a limit on payday loan size; $500 is a common loan limit although the limits range from $300 to $1,000.[25] In 2013, the Bureau reported that the median loan amount for storefront payday loans was $350, based on supervisory data.[26] This finding is broadly consistent with other studies using data from one or more lenders as well as with self-reported information in surveys of payday borrowers[27] and State regulatory reports.[28]

The fee for a payday loan is generally structured as a percentage or dollar amount per $100 borrowed, rather than a periodic interest rate based on the amount of time the loan is outstanding. Many State laws set a maximum amount for these fees, with 15 percent ($15 per $100 borrowed) being the most common limit.[29] The median storefront payday loan fee is $15 per $100; thus for a $350 loan, the borrower must repay $52.50 in finance charges together with the $350 borrowed for a total repayment amount of $402.50.[30] The annual percentage rate (APR) on a 14-day loan with these terms is 391 percent.[31] For payday borrowers who receive monthly income and thus receive a 30-day or monthly payday loan—many of whom are Social Security recipients[32]—a $15 per $100 charge on a $350 loan for a term of 30 days equates to an APR of about 180 percent. The Bureau has found the median loan term for a storefront payday loan to be 14 days, with an average term of 18.3 days. The longer average loan duration is due to State laws that require minimum loan terms that may extend beyond the borrower's next pay date.[33] Fees and loan amounts are higher for online loans, described in more detail below.

On the loan's due date, the terms of the loan obligate the borrower to repay the loan in full. Although the States that created exceptions to their usury limits for payday lending generally did so on the theory these were short-term loans to which the usual usury rules did not easily apply, in 19 of the States that authorize payday lending the lender is permitted to roll over the loan when it comes due. A rollover occurs when, instead of repaying the loan in full at maturity, the consumer pays only the fees due and the lender agrees to extend the due date.[34] By rolling over, the loan repayment of the principal is extended for another period of time, usually equivalent to the original loan term, in return for the consumer's agreement to pay a new set of fees calculated in the same manner as the initial fees (*e.g.*, 15 percent of the loan principal). The rollover fee is not applied to reduce the loan principal or amortize the loan. As an example, if the consumer borrows $300 with a fee of $45 (calculated as $15 per $100 borrowed), the consumer will owe $345 on the due date, typically 14 days later. On the due date, if the consumer cannot afford to repay the entire $345 due or is otherwise offered the option to roll over the loan, she will pay the lender $45 for another 14 days. On the 28th day, the consumer will owe the original $345 and if she pays the loan in full then, will have paid a total of $390 for the loan.

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[24] The Bureau is aware from market outreach that at a storefront payday lender's Tennessee branch, almost 100 percent of customers opted to provide ACH authorization rather than leave a post-dated check for their loans. *See also Can Anyone Get a Payday Loan?,* Speedy Cash, *https://www.speedycash.com/faqs/payday-loans/can-anyone-get-a-payday-loan/* (last visited Feb. 4, 2016) ("If you choose to apply in one of our payday loan locations, you will need to provide a repayment source which can be a personal check or your bank routing information."); QC Holdings, Inc., 2014 Annual Report (Form 10-K), at 3, 6 (Mar. 12, 2015), *available at http://www.sec.gov/Archives/edgar/data/1289505/000119312515088809/d854360d10k.htm*; First Cash Fin. Servs., Inc., 2015 Annual Report (Form 10-K), at 20 (Feb. 17, 2016), *available at https://www.sec.gov/Archives/edgar/data/840489/000084048916000076/fcfs1231201510-k.htm.*

[25] At least 19 States cap payday loan amounts between $500 and $600 (Alabama, Alaska, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, and Virginia), and California limits payday loans to $300 (including the fee) and Delaware caps loans at $1,000. Ala. Code sec. 5-18A-12(a), Alaska Stat. sec. 06.50.410, Cal. Fin. Code sec. 23035(a), Del. Code Ann. tit. 5, sec. 2227(7), Fla. Stat. sec. 560.404(5), Haw. Rev. Stat. sec. 480F-4(c), Iowa Code sec. 533D.10(1)(b), Kan. Stat. Ann. Sec. 16a-2-404(1)(c), Ky. Rev. Stat. Ann. Sec. 286.9-100(9), Mich. Comp. Laws sec. 487.2153(1), Miss. Code Ann. Sec. 75-67-519(2), Mo. Rev. Stat. sec. 408.500(1), Neb. Rev. Stat. sec. 45-919(1)(b), N.D. Cent. Code sec. 13-08-12(3); Ohio Rev. Code Ann. sec. 1321.39(A), Okla. Stat. tit. 59, sec. 3106(7), R.I. Gen. Laws sec. 19-14.4-5.1(a), S.C. Code Ann. sec. 34-39-180(B), S.D. Codified Laws sec. 54-4-66, Tenn. Code Ann. Sec. 45-17-112(o), Va. Code Ann. Sec. 6.2-1816(5). States that limit the loan amount to the lesser of a percent of the borrower's income or a fixed dollar amount include Idaho—25 percent or $1,000, Illinois—25 percent or $1,000, Indiana—20 percent or $550, Washington—30 percent or $700, and Wisconsin—35 percent or $1,500. At least two States cap the maximum payday loan at 25 percent of the borrower's gross monthly income (Nevada and New Mexico). A few States laws are silent as to the maximum loan amount (Utah and Wyoming). Idaho Code Ann. § 28-46-413(1), (2); 815 Ill. Comp. Stat. 122/2-5(e); Ind. Code §§ 24-4.5-7-402, -404; Wash. Rev. Code § 31.45.073(2); Wis. Stat. § 138.14(12)(b); Nev. Rev. Stat. § 604A.425(1)(b), N.M. Stat. Ann. § 58-15-32(A), Utah Code Ann. § 7-23-401, Wyo. Stat. Ann. § 40-14-363.

[26] *CFPB Payday Loans and Deposit Advance Products White Paper,* at 15.

[27] Leslie Parrish & Uriah King, Ctr. for Responsible Lending, *Phantom Demand: Short-term Due Date Generates Need for Repeat Payday Loans, Accounting for 76% of total Volume,* at 21 (2009), *available at http://www.responsiblelending.org/payday-lending/research-analysis/phantom-demand-final.pdf* (reporting $350 as the average loan size); Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 9 (2012) [hereinafter *Pew Payday Lending in America: Report 1*], *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf)* (reporting $375 as the average).

[28] For example: $361.21 (Illinois average, see Ill. Dep't. of Fin. & Prof. Reg., *Illinois Trends Report All Consumer Loan Products Through December 2013,* at 15 (May 28, 2014), *available at https://www.idfpr.com/dfi/ccd/pdfs/IL_Trends_Report%202013.pdf*); $350 (Idaho average, see Idaho Dep't. of Fin., *Idaho Credit Code "Fast Facts" With Fiscal and Annual Report Data as of January 1, 2016,* at 5, *available at https://www.finance.idaho.gov/ConsumerFinance/Documents/Idaho-Credit-Code-Fast-Facts-With-Fiscal-Annual-Report-Data-01012016.pdf*); $389.50 (Washington average, see Wash. State Dep't. of Fin. Insts., 2014 Payday Lending Report, at 6, *available at http://www.dfi.wa.gov/sites/default/files/reports/2014-payday-lending-report.pdf.*

[29] Of the States that expressly authorize payday lending, Rhode Island has the lowest cap at 10 percent of the loan amount. Florida has the same fee amount but also allows a flat $5 verification fee. Oregon's fees are $10 per $100 capped at $30 plus 36 percent interest. Some States have tiered caps depending on the size of the loan. Generally, in these States the cap declines with loan size. However, in Mississippi, the cap is $20 per hundred for loans under $250 and $21.95 for larger loans (up to the State maximum of $500). Seven States do not cap fees on payday loans or are silent on fees (Delaware, Idaho, Nevada, South Dakota, Texas (no cap on credit access business fees), Utah, and Wisconsin). Depending on State law, the fee may be referred to as a "charge," "rate," "interest" or other similar term. R.I. Gen. Laws § 19-14.4-4(4), Fla. Stat. § 560.404(6), Or. Rev. Stat. § 725A.064(1)-(2), Miss. Code Ann. § 75-67-519(4), Del. Code Ann. tit. 5, § 2229, Idaho Code Ann. § 28-46-412(3), S.D. Codified Laws § 54-4-44, Tex. Fin. Code Ann. § 393.602(b), Utah Code Ann. § 7-23-401, Wis. Stat. § 138.14(10) (a).

[30] *CFPB Payday Loans and Deposit Advance Products White Paper,* at 15-17.

[31] Throughout the part II., APR refers to the annual percentage rate calculated as required by the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* and Regulation Z, 12 CFR 1026, except where otherwise specified.

[32] *CFPB Payday Loans and Deposit Advance Products White Paper,* at 16, 19 (33 percent of payday loans borrowers receive income monthly; 18 percent of payday loan borrowers are public benefits recipients, largely from Social Security including Supplemental Security Income and Social Security Disability, typically paid on a monthly basis).

[33] For example, Washington requires the due date to be on or after the borrower's next pay date but if the pay date is within seven days of taking out the loan, the due date must be on the second pay date after the loan is made. Wash. Rev. Code § 31.45.073(2). A number of States set minimum loan terms, some of which are tied directly to the consumer's next payday.

[34] This proposal uses the term "rollover" but this practice is sometimes described under State law or by lenders as a "renewal" or an "extension."

In some States in which rollovers are permitted they are subject to certain limitations such as a cap on the number of rollovers or requirements that the borrower amortize—repay part of the original loan amount—on the rollover. Other States have no restrictions on rollovers. Specially, seventeen of the States that authorize single-payment payday lending prohibit lenders from rolling over loans and twelve more States impose some rollover limitations.[35] However, in most States where rollovers are prohibited or limited, there is no restriction on the lender immediately making a new loan to the consumer (with new fees) after the consumer has repaid the prior loan. New loans made the same day or "back-to-back" loans effectively replicate a rollover because the borrower remains in debt to the lender on the borrower's next payday.[36] A handful of States have implemented a cooling-off period before a lender may make a new loan. The most common cooling-off period is one day, although some States have longer periods following a specified number of rollovers or back-to-back loans.[37]

Twenty States require payday lenders to offer extended repayment plans to borrowers who encounter difficulty in repaying payday loans.[38] Some States' laws are very general and simply provide that a payday lender may allow additional time for repayment of a loan. Other laws provide more detail about the plans including: When lenders must offer repayment plans; how borrowers may elect to participate in repayment plans; the number and timing of payments; the length of plans; permitted fees for plans; requirements for credit counseling; requirements to report plan payments to a statewide database; cooling-off or "lock-out" periods for new loans after completion of plans; and the consequences of plan defaults. The effects of these various restrictions are discussed further below in Market Concerns—Short-Term Loans.

Industry size and structure. There are various estimates as to the number of consumers who use payday loans on an annual basis. One survey found that 2.4 million households (2 percent of U.S. households) used payday loans in 2013.[39] In another survey, 4.2 percent of households reported taking out a payday loan.[40] These surveys referred to payday loans generally, and did not specify whether they were referring to loans made online or at storefront locations. One report estimated the number of individual borrowers, rather than households, was higher at approximately 12 million and included both storefront and online loans.[41] See Market Concerns—Short-term Loans for additional information on borrower characteristics.

There are several ways to gauge the size of the storefront payday loan industry. Typically, the industry has been measured by counting the total dollar value of each loan made during the course of a year, counting each rollover, back-to-back loan or other reborrowing as a new loan that is added to the total. By this metric, one analyst estimated that from 2009 to 2014, storefront payday lending generated approximately $30 billion in new loans per years and that by 2015 the volume had declined to $23.6 billion,[42] although these numbers may include products other than single-payment loans. Alternatively, the industry can be measured by calculating the dollar amount of loan balances outstanding. Given the amount of payday loan reborrowing, which results in the same funds of the lender being used to finance multiple loan originations, the dollar amount of loan balances outstanding may provide a more nuanced sense of the industry's scale. Using this metric, the Bureau estimates that in 2012, storefront payday lenders held approximately $2 billion in outstanding single-payment loans.[43] In 2015, industry revenue (fees paid on storefront payday loans) was an estimated $3.6 billion, representing 15 percent of loan originations.[44]

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[35] States that prohibit rollovers include California, Florida, Hawaii, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, Oklahoma, South Carolina, Tennessee, Virginia, Washington, and Wyoming. Other States such as Iowa and Kansas restrict a loan from being repaid with the proceeds of another loan. Cal. Fin. Code § 23037(a), Fla. Stat. § 560.404(18), Haw. Rev. Stat. § 480F-4(d), 815 Ill. Comp. Stat. 122/2-30, Ind. Code § 24-4.5-7-402(7), Ky. Rev. Stat. Ann. § 286.9-100(14), Mich. Comp. Laws § 487.2155(1), Minn. Stat. § 47.60(2)(f), Miss. Code Ann. § 75-67-519(5), Neb. Rev. Stat. § 45-919(1)(f), N.M. Stat. Ann. § 58-15-34(A), Okla. Stat. tit. 59, § 3109(A), S.C. Code Ann. § 34-39-180(F), Tenn. Code Ann. § 45-17-112(q), Va. Code Ann. § 6.2-1816(6), Wash. Rev. Code § 31.45.073(2), Wyo. Stat. Ann. § 40-14-364, Iowa Code § 533D.10(1)(e), Kan. Stat. Ann. § 16a-2-404(6). Other States that permit some degree of rollovers include Alabama (one), Alaska (two), Delaware (four), Idaho (three), Missouri (six if there is at least 5 percent principal reduction on each rollover), Nevada (may extend loan up to 60 days after the end of the initial loan term), North Dakota (one), Oregon (two), Rhode Island (one), South Dakota (four if there is at least 10 percent principal reduction on each rollover), Utah (allowed up to 10 weeks after the execution of the first loan), and Wisconsin (one). Ala. Code § 5-18A-12 (b), Alaska Stat. § 06.50.470(b), Del. Code Ann. tit. 5, § 2235A (a)(2), Idaho Code Ann. § 28-46-413(9), Mo. Rev. Stat. § 408.500(6), Nev. Rev. Stat. § 604A.480(1), N.D. Cent. Code § 13-08-12(12), Or. Rev. Stat. § 725A.064(6), R.I. Gen. Laws § 19-14.4-5.1(g), S.D. Codified Laws § 54-4-65, Utah Code Ann. § 7-23-401 (4)(b), Wis. Stat. § 138.14 (12)(a).

[36] See *CFPB Payday Loans and Deposit Advance Products White Paper,* at 4; Adm'r of the Colo. Unif. Consumer Credit Code, Colo. Dep't of Law, *Payday Lending Demographic and Statistical Information: July 2000 through December 2012,* at 24 (Apr. 10, 2014) [hereinafter *Colorado UCCC 2000-2012 Demographic and Statistical Information*], *available at http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/DemoStatsInfo/ddlasummary2000-2012.pdf. Pew Payday Lending in America: Report 1,* at 7; Parrish & King, at 7.

[37] States with cooling-off periods include: Alabama (next business day after a rollover is paid in full); Florida (24 hours); Illinois (seven days after a consumer has had payday loans for more than 45 days); Indiana (seven days after five consecutive loans); New Mexico (10 days after completing an extended payment plan); North Dakota (three business days); Ohio (one day with a two loan limit in 90 days, four per year); Oklahoma (two business days after fifth consecutive loan); Oregon (seven days); South Carolina (one business day between all loans and two business days after seventh loan in a calendar year); Virginia (one day between all loans, 45 days after fifth loan in a 180 day period, and 90 days after completion of an extended payment plan or extended term loan); and Wisconsin (24 hour after renewals). Ala. Code § 5-18A-12(b); Fla. Stat. § 560.404(19); 815 Ill. Comp. Stat. 122/2-5(b); Ind. Code § 24-4.5-7-401(2); N.M. Stat. Ann. § 58-15-36; N.D. Cent. Code § 13-08-12(4); Ohio Rev. Code Ann. § 1321.41(E), (N), (R); Okla. Stat. tit. 59, § 3110; Or. Rev. Stat. § 725A.064(7); S.C. Code Ann. § 34-39-270(A), (B); Va. Code Ann. § 6.2-1816(6); Wis. Stat. § 138.14(12)(a).

[38] States with statutory extended repayment plans include: Alabama, Alaska, California, Delaware, Florida, Idaho, Illinois, Indiana, Louisiana, Michigan (fee permitted), Nevada, New Mexico, Oklahoma (fee permitted), South Carolina, Utah, Virginia, Washington, Wisconsin, and Wyoming. Florida also requires that as a condition of providing a repayment plan (called a grace period), borrowers make an appointment with a consumer credit counseling agency and complete counseling by the end of the plan. Ala. Code § 5-18A-12(c), Alaska Stat. § 06.50.550(a), Cal. Fin. Code § 23036(b), Del. Code Ann. tit. 5, § 2235A(a)(2), Fla. Stat. § 560.404(22)(a), Idaho Code Ann. § 28-46-414, 815 Ill. Comp. Stat. 122/2-40, Ind. Code § 24-4.5-7-401(3), La. Rev. Stat. Ann. § 9:3578.4.1, Mich. Comp. Laws § 487.2155(2), Nev. Rev. Stat. § 604A.475(1), N.M. Stat. Ann. § 58-15-35, Okla. Stat. tit. 59, § 3109(D), S.C. Code Ann. § 34-39-280, Utah Code Ann. § 7-23-403, Va. Code Ann. § 6.2-1816(26), Wash. Rev. Code § 31.45.084(1), Wis. Stat. § 138.14(11)(g), Wyo. Stat. Ann. § 40-14-366(a).

[39] Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at 83, 85 (2014), *available at https://www.fdic.gov/householdsurvey/2013appendix.pdf.*

[40] Jesse Bricker, *et al., Changes in U.S. Family Finances from 2010 to 2013: Evidence From the Survey of Consumer Finances,* 100 Fed. Reserve Bulletin no. 4, at 29 (Sept. 2014), *available at http://www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf.*

[41] *Pew Payday Lending in America: Report 1,* at 4.

[42] John Hecht, Jefferies LLC, *The State of Short-Term Credit Amid Ambiguity, Evolution and Innovation* (2016) (slide presentation) (on file); John Hecht, Jeffries LLC, *The State of Short-Term Credit in a Constantly Changing Environment* (2015) at 4 (slide presentation) (on file).

About ten large firms account for half of all payday storefront locations.[45] Several of these firms are publicly traded companies offering a diversified range of products that also include installment and pawn loans.[46] Other large payday lenders are privately held,[47] and the remaining payday loan stores are owned by smaller regional or local entities. The Bureau estimates there are about 2,400 storefront payday lenders that are small entities as defined by the Small Business Administration (SBA).[48]

There were an estimated 15,766 payday loan stores in 2014 within the 36 States in which storefront payday lending occurs.[49] By way of comparison, there were 14,350 McDonald's fast food outlets in the United States in 2014.[50]

The average number of payday loan stores in a county with a payday loan store is 6.32.[51] The Bureau has analyzed payday loan store locations in States which maintain lists of licensed lenders and found that half of all stores are less than one-third of a mile from another store, and three-quarters are less than a mile from the nearest store.[52] Even the 95th percentile of distances between neighboring stores is only 4.3 miles. Stores tend to be closer together in counties within metropolitan statistical areas (MSA).[53] In non-MSA counties the 75th percentile of distance to the nearest store is still less than one mile, but the 95th percentile is 22.9 miles.

Research and the Bureau's own market outreach indicate that payday loan stores tend to be relatively small with, on average, three full-time equivalent employees.[54] An analysis of loan data from 29 States found that the average store made 3,541 advances in a year.[55] Given rollover and reborrowing rates, a report estimated that the average store served fewer than 500 customers per year.[56]

Marketing, underwriting, and collections practices. Payday loans tend to be marketed as a short-term bridge to cover emergency expenses. For example, one lender suggests that, for consumers who have insufficient funds on hand to meet such an expense or to avoid a penalty fee, late fee, or utility shut-off, a payday loan can "come in handy" and "help tide you over until your next payday." [57] Some lenders offer new borrowers their initial loans at no fee ("first loan free") to encourage consumers to try a payday loan.[58] Stores are typically located in high-traffic commuting corridors and near shopping areas where consumers obtain groceries and other staples.[59]

The evidence of price competition among payday lenders is mixed. In their financial reports, publicly traded payday lenders have reported their key competitive factors to be non-price related. For instance, they cite location, customer service, and convenience as some of the primary factors on which payday lenders compete with one another, as well as with other financial service providers.[60] Academic studies have found that, in States with rate caps, loans are almost always made at the maximum rate permitted.[61] Another study likewise found that in States with rate caps, firms lent at the maximum permitted rate, but that lenders operating in multiple States with varying rate caps raise their fees to those caps rather than charging consistent fees company-wide. The study additionally found that in States with no rate caps, different lenders operating in those States charged different rates. The study reviewed four lenders that operate in Texas[62] and observed differences in the cost to borrow $300 per two-week pay period: Two lenders charged $61 in fees, one charged $67, and another charged $91, indicating some level of price variation between lenders (ranging from about $20 to $32 per $100 borrowed).[63]

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[43] Bureau staff estimate based on public company financial information, confidential information gathered in the course of statutory functions, and industry analysts' reports. The estimate is derived from lenders' single-payment payday loans gross receivables and gross revenue and industry analysts' reports on loan volume and revenue. No calculations were done for 2013 to 2015, but that estimate would be less than $2 billion due to changes in the market as the industry has shifted away from single-payment payday loans to products discussed in part II.C below.

[44] Hecht, *The State of Short-Term Credit Amid Ambiguity, Evolution and Innovation.*

[45] *See* Montezemolo, *Payday Lending Abuses and Predatory Practices,* at 9.

[46] The publicly traded firms are Cash America (CSH), Community Choice Financial Inc./Checksmart (CCFI), EZCORP (EZPW), First Cash Financial Services (FCFS), and QC Holdings (QCCO). Cash America has de-emphasized payday loans with the exception of stores in Ohio and Texas, and in November 2014 it migrated its online loans to its spin-off company, Enova. Cash America Int'l, Inc., Investor Relations Presentation, at 6, 9, *available at http://www.cashamerica.com/Files/InvestorPresentations/15_0331%20CSH%20IR%20Presentation.pdf.* First Cash Financial Services closed most of its U.S. payday and vehicle title loan credit access business locations, leaving 42 Texas storefronts at the end of 2015. Its primary focus is on its pawn loan locations; only 4 percent of its revenue is from non-pawn consumer loans. (Credit access businesses are described below.) First Cash Fin. Servs., Inc., 2015 Annual Report (Form 10-K), at 1, 7. As noted above, in April 2016, First Cash Financial Services announced a merger agreement with Cash America. QC Holdings delisted from Nasdaq on Feb. 16, 2016 and is traded over-the-counter. QC Holding Companies, *http://www.qcholdings.com/investor.aspx?id=1* (last visited Apr. 7, 2016). Until July 2015, EZCORP offered payday, vehicle title, and installment loans but now focuses domestically on pawn lending. EZCORP, 2015 Annual Report (Form 10-K), at 3, 23.

[47] The larger privately held payday lending firms include Advance America, ACE Cash Express, Axcess Financial (CNG Financial, Check 'n Go, Allied Cash), Check Into Cash, DFC Global (Money Mart), PLS Financial Services, and Speedy Cash Holdings Corporation. *See* Montezemolo, *Payday Lending Abuses and Predatory Practices,* at 9-10; John Hecht, Stephens, Inc., *Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework,* (Feb. 27, 2014) (on file).

[48] Bureau staff estimated the number of storefront payday lenders using licensee information from State financial regulators, firm revenue information from public filings and non-public sources, and, for a small number of States, industry market research relying on telephone directory listings from Steven Graves and Christopher Peterson, *available at http://www.csun.edu/~sg4002/research/data/US_pdl_addr.xls.* Based on these sources, there are approximately 2,503 storefront payday lenders, including those operating primarily as loan arrangers or brokers, in the United States. Based on the publicly-available revenue information, at least 56 of the firms have revenue above the small entity threshold. Most of the remaining firms operate a very small number of storefronts. Therefore, while some of the firms without publicly available information may have revenue above the small entity threshold, in the interest of being inclusive they are all assumed to be small entities.

[49] Bureau staff estimated the number of storefront payday lenders using the method referenced in the immediately preceding footnote.

[50] McDonald's Corp., 2014 Annual Report (Form 10-K) at 22 (Feb. 24, 2015), *available at http://www.sec.gov/Archives/edgar/data/63908/000006390815000016/mcd-12312014x10k.htm.*

[51] James R. Barth, Jitka Hilliard, John S. Jaera Jr., & Yanfei Sun, *Do State Regulations Affect Payday Lender Concentration?*, at 12 (2015), *available athttp://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581622.*

[52] *CFPB Report on Supplemental Findings,* at ch. 3.

[53] An MSA is a geographic entity delineated by the Office of Management and Budget. An MSA contains a core urban area of 50,000 or more in population. *See Metropolitan and Micropolitan,* U.S. Census Bureau, *http://www.census.gov/population/metro/* (last visited Apr. 7, 2016).

[54] Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* (FDIC Center for Fin. Research, Working Paper No. 2005-09, 2005), *available at https://www.fdic.gov/bank/analytical/cfr/2005/wp2005/cfrwp_2005-09_flannery_samolyk.pdf; IHS Global Insight USA (Inc.), Economic Impact of the Payday Lending Industry*, at 3 (2009), available at *http://cfsaa.com/Portals/0/Policymakers/20090515_Research_IHS_EconomicImpactofPayday.pdf (and on file).*

[55] Montezemolo, at 26.

[56] Pew Charitable Trusts, *Payday Lending in America Report 3: Policy Solutions,* at 18 (2013), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.*

[57] *Cash Advance/Short-term Loans,* Cash America Int'l Inc., *http://www.cashamerica.com/LoanOptions/CashAdvances.aspx (last visited Apr. 7, 2016).*

[58] For example, Instant Cash Advance introductory offer of a free (no fee) cash advance of $200, *http://www.instantcashadvancecorp.com/free-loan-offer-VAL312.php* (storefront payday loans); Check N Title Loans, first loan free, *http://www.checkntitle.com/* (storefront payday and title loans); AmeriTrust Financial LLC, first payday loan free, *http://www.americantrustcash.com/payday-loans*, (storefront payday, title, and installment loans, first loan free on payday loans) (all firm Web sites last visited on Dec. 21, 2015).

[59] First Cash Fin. Servs., Inc., 2015 Annual Report (Form 10-K), at 9; QC Holdings, Inc., 2014 Annual Report (Form 10-K), at 11; Cmty. Choice Fin. Inc., 2015 Annual Report (Form 10-K), at 5 (Mar. 30, 2016), *available at https://www.sec.gov/Archives/edgar/data/1528061/000110465916108753/a15-23332_110k.htm.*

[60] *See* QC Holdings, Inc., 2015 Annual Report (Form 10-K), at 12-13.

The application process for a payday loan is relatively simple. For a storefront payday loan, a borrower must generally provide some verification of income (typically a pay stub) and evidence of a personal deposit account.[64] Although a few States impose limited requirements that lenders consider a borrower's ability to repay,[65] storefront payday lenders generally do not consider a borrower's other financial obligations or require collateral (other than the check or electronic debit authorization) for the loan. Most storefront payday lenders do not consider traditional credit reports or credit scores when determining loan eligibility, nor do they report any information about payday loan borrowing history to the nationwide consumer reporting agencies, TransUnion, Equifax, and Experian.[66] From market outreach activities and confidential information gathered in the course of statutory functions, the Bureau is aware that a number of storefront payday lenders obtain data from one or more specialty consumer reporting agencies to check for previous payday loan defaults, identify recent inquiries that suggest an intention to not repay the loan, and perform other due diligence such as identity and deposit account verification. Some storefront payday lenders use analytical models and scoring that attempt to predict likelihood of default. Through market outreach and confidential information gathered in the course of statutory functions, the Bureau is aware that many storefront payday lenders limit their underwriting to first-time borrowers or those returning after an absence.

From market outreach, the Bureau is aware that the specialty consumer reporting agencies contractually require any lender that obtains data to also report data to them, although compliance may vary. Reporting usually occurs on a real-time or same-day basis. Separately, 14 States require lenders to check statewide databases before making each loan in order to ensure that their loans comply with various State restrictions.[67] These States likewise require lenders to report certain lending activity to the database, generally on a real-time or same-day basis. As discussed in more detail above, these State restrictions may include prohibitions on consumers having more than one payday loan at a time, cooling-off periods, or restrictions on the number of loans consumers may take out per year.

Although a consumer is generally required when obtaining a loan to provide a post-dated check or authorization for an electronic debit of the consumer's account which could be presented to the consumer's bank, consumers are in practice strongly encouraged and in some cases required by lenders to return to the store when the loan is due to "redeem" the check.[68] Some lenders give borrowers appointment cards with a date and time to encourage them to return with cash. For example, one major storefront payday lender explained that after loan origination "the customer then makes an appointment to return on a specified due date, typically his or her next payday, to repay the cash advance . . . . Payment is usually made in person, in cash at the center where the cash advance was initiated . . . ."[69]

The Bureau is aware, from confidential information gathered in the course of statutory functions and from market outreach, that lenders routinely make reminder calls to borrowers a few days before loan due dates to encourage borrowers to return to the store. One large lender reported this practice in a public filing.[70] Another major payday lender with a predominantly storefront loan portfolio reported that in 2014, over 90 percent of its payday and installment loans were repaid or renewed in cash;[71] this provides an opportunity for store personnel to solicit borrowers to roll over or reborrow while they visit the store to discuss their loans or make loan payments. The Bureau is aware, from confidential information gathered in the course of statutory functions, that one or more storefront payday lenders have operating policies that specifically state that cash is preferred because only half of their customers' checks would clear if deposited on the loan due dates. One storefront payday lender even requires its borrowers to return to the store to repay. Its Web site states: "All payday loans must be repaid with either cash or money order. Upon payment, we will return your original check to you." [72]

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[61] Robert DeYoung & Ronnie Phillips, *Payday Loan Pricing* (The Fed. Reserve Bank of Kansas City, Working Paper No. RWP 09-07, 2009), at 27-28, *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1066761* (studying rates on loans in Colorado between 2000 and 2006); Mark Flannery & Katherine Samolyk, at 9-10.

[62] In Texas, these lenders operate as credit services organizations or loan arrangers with no fee caps, described in more detail below. Pew Charitable Trusts, *How State Rate Limits Affect Payday Loan Prices,* (2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.*

[63] *Id.*

[64] *See, e.g.,* the process as described by one lender: *In-Store Cash Advance FAQ,* Check Into Cash, *https://checkintocash.com/faqs/in-store-cash-advance/ (last visited Feb. 4, 2016).*

[65] For example, Utah requires lenders to make an inquiry to determine that the borrower has the ability to repay the loan, which may include rollovers or extended payment plans. This determination may be made through borrower affirmation of ability to repay, proof of income, repayment history at the same lender, or information from a consumer reporting agency. Utah Code § 7-23-401. Missouri requires lenders to consider borrower financial ability to reasonably repay under the terms of the loan contract, but does not specify how lenders may satisfy this requirement Mo. Rev. Stat § 408.500(7). Other States prohibit loans that exceed a certain percentage of the borrower's gross monthly income (generally between 20 and 35 percent) as a proxy for ability to repay. These States include Idaho, Illinois, Indiana, Montana, New Mexico, Oregon, Washington, and Wisconsin. Idaho Code § 28-46-412(2), 815 Ill. Comp. Stat § 122/2-5(e), Ind. Code § 24-4.5-7-402(1), Mont. Code Ann. § 31-1-723(8), N.M. Stat. Ann. § 58-15-32(A), Or. Admin. Rule § 441-735-0272(d), Wash. Rev. Code § 31.45.073(2), Wis. Stat. § 138.14.

[66] *See, e.g.,* Neil Bhutta, Paige Marta Skiba, & Jeremy Tobacman, *Payday Loan Choices and Consequences* (2014) at 3, *available at http://www.calcfa.com/docs/PaydayLoanChoicesandConsequences.pdf.*

[67] The States with databases are Alabama, Delaware, Florida, Illinois Indiana, Kentucky, Michigan, New Mexico, North Dakota, Oklahoma, South Carolina, Virginia, Washington, and Wisconsin. Illinois also requires use of its database for payday installment loans, vehicle title loans, and some installment loans. Some State laws allow lenders to charge borrowers a fee to access the database that may be set by statute. Ala. Code § 5-18A-13(o), Del. Code Ann. tit. 5, § 2235B, Fla. Stat. § 560.404(23), 815 Ill. Comp. Stat. 122/2-15, Ind. Code § 24-4.5-7-404(4), Ky. Rev. Stat. Ann. § 286.9-100(19)(b), Mich. Comp. Laws § 487.2142, N.M. Stat. Ann. § 58-15-37(B), N.D. Cent. Code § 13-08-12(4), Okla. Stat. tit. 59, § 3109(B)(2)(b), S.C. Code Ann. § 34-39-175, Va. Code Ann. § 6.2-1810, Wash. Rev. Code § 31.45.093, Wis. Stat. § 138.14(14).

[68] According to the Bureau's market outreach, if borrowers provided ACH authorization and return to pay the loan in cash, the authorization may be returned to them or voided.

[69] Advance America, 2011 Annual Report (Form 10-K) at 45 (Mar. 15, 2012), *available at http://www.sec.gov/Archives/edgar/data/1299704/000104746912002758/a2208026z10-k.htm. See also In-Store Cash Advance FAQ,* Check Into Cash, *https://checkintocash.com/faqs/in-store-cash-advance/ (last visited Feb. 4, 2016)* ("We hold your check until your next payday, at which time you can come in and pay back the advance.").

[70] When Advance America was a publicly traded corporation, it reported: "The day before the due date, we generally call the customer to confirm their payment due date." Advance America, 2011 Annual Report (Form 10-K), at 11.

[71] QC Holdings, 2014 Annual Report (Form 10-K), at 7. These statistics appear to also include QC's online payday loans, but the online portfolio was very small in 2014 (approximately 4.6 percent of revenue).

Encouraging or requiring borrowers to return to the store on the due date provides lenders an opportunity to offer borrowers the option to roll over the loan or, where rollovers are prohibited by State law, to reborrow following repayment or after the expiration of any cooling-off period. Most storefront lenders examined by the Bureau employ monetary incentives that reward employees and store managers for loan volumes. Since as discussed below, a majority of loans result from rollovers of existing loans or reborrowing shortly after loans have been repaid, rollovers and reborrowing contribute substantially to employees' compensation. From confidential information gathered in the course of statutory functions, the Bureau is aware that rollover and reborrowing offers are made when consumers log into their accounts online, during "courtesy calls" made to remind borrowers of upcoming due dates, and when borrowers repay in person at storefront locations. In addition, some lenders train their employees to offer rollovers during courtesy calls even when borrowers responded that they had lost their jobs or suffered pay reductions.

Store personnel often encourage borrowers to roll over their loans or to reborrow, even when consumers have demonstrated an inability to repay their existing loans. In an enforcement action, the Bureau found that one lender maintained training materials that actively directed employees to encourage reborrowing by struggling borrowers. It further found that if a borrower did not repay or pay to roll over the loan on time, store personnel would initiate collections. Store personnel or collectors would then offer the option to take out a new loan to pay off their existing loan, or refinance or extend the loan as a source of relief from the potentially negative outcomes (*e.g.*, lawsuits, continued collections). This "cycle of debt" was depicted graphically as part of "The Loan Process" in the company's new hire training manual.[73]

In addition, though some States require lenders to offer extended repayment plans and some trade associations have designated provision of such plans as a best practice, individual lenders may often be reluctant to offer them. In Colorado, for instance, some payday lenders reported prior to a regulatory change in 2010 that they had implemented practices to restrict borrowers from obtaining the number of loans needed to be eligible for State-mandated extended payment plans under the previous regime or banned borrowers on plans from taking new loans.[74] The Bureau is also aware, from confidential information gathered in the course of statutory functions, that one or more lenders used training manuals that instructed employees not to mention these plans until after employees first offered rollovers, and then only if borrowers specifically asked about the plans. Indeed, details on implementation of the repayment plans that have been designated by two national trade associations for storefront payday lenders as best practices are unclear, and in some cases place a number of limitations on exactly how and when a borrower must request assistance to qualify for these "off-ramps." For instance, one trade association claiming to represent more than half of all payday loan stores states that as a condition of membership, members must offer an "extended payment plan" but that borrowers must request the plan at least one day prior to the date on which the loan is due, generally in person at the store where the loan was made or otherwise by the same method used to originate the loan.[75] It also states that borrowers must request an extended payment plan at least one day prior to the date on which the loan is due and must return to the store where the loan was made to do so or request the plan by using the same method used to originate the loan.[76] Another trade association claiming over 1,300 members, including both payday lenders and firms that offer non-credit products such as check cashing and money transmission, states that members will provide the option of extended payment plans in the absence of State-mandated plans to customers unable to repay but details of the plans are not available on its Web site.[77]

From confidential information gathered in the course of statutory functions and market outreach, the Bureau is aware that if a borrower fails to return to the store when a loan is due, the lender may attempt to contact the consumer and urge the consumer to make a cash payment before depositing the post-dated check that the consumer had provided at origination or electronically debiting the account. The Bureau is aware, from confidential information gathered in the course of its statutory functions and market outreach, that lenders may take various other actions to try to ensure that a payment will clear before presenting a check or ACH. These efforts may range from storefront lenders calling the borrower's bank to ask if a check of a particular size would clear the account or through the use of software offered by a number of vendors that attempts to model likelihood of repayment ("predictive ACH").[78] If these attempts are unsuccessful, store personnel at either the storefront level or at a centralized location will then generally engage in collection activity.

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[72] Instant Cash Advance introductory offer of a free (no fee) cash advance of $200, *http://www.instantcashadvancecorp.com/free-loan-offer-VAL312.php*.

[73] Press Release, Bureau of Consumer Fin. Prot., *CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt* (July 10, 2014), *http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/*.

[74] State of Colo. Dep't of Law, *2009 Deferred Deposit/Payday Lenders Annual Report*, at 2, *available at http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReportComposites/2009_ddl_composite.pdf. See* Market Concerns—Short-Term Loans below for additional discussion of lenders' extended payment plan practices.

[75] *About CFSA*, Cmty. Fin. Servs. Ass'n of America, *http://cfsaa.com/about-cfsa.aspx (last visited Jan. 15, 2016); CFSA Member Best Practices*, Cmty. Fin. Servs. Ass'n of America, *http://cfsaa.com/cfsa-member-best-practices.aspx (last visited* Jan. 15, 2016). Association documents direct lenders to display a "counter card" describing the association's best practices. Plans are to be offered in the absence of State-mandated plans at no charge and payable in four equal payments coinciding with paydays.

[76] *What Is an Extended Payment Plan?*, Cmty. Fin. Servs. Ass'n of America, *http://cfsaa.com/cfsa-member-best-practices/what-is-an-extended-payment-plan.aspx* (last visited Jan. 15, 2016).

[77] *Membership*, Fin. Serv. Ctrs. of America, *http://www.fisca.org/AM/Template.cfm?Section=Membership*; Joseph M. Doyle, *Chairman's Message*, Fin. Serv. Ctrs. of America, *http://www.fisca.org/AM/Template.cfm?Section=Chairman_s_Message&Template=/CM/HTMLDisplay.cfm&ContentID=19222* (last visited Jan. 15, 2016); *FiSCA Best Practices*, Fin. Serv. Ctrs. of America, *http://www.fisca.org/Content/NavigationMenu/AboutFISCA/CodesofConduct/default.htm* (last visited Jan. 15, 2016); *Guidelines to Extended Payment Plan*, Fin. Serv. Ctrs. of America, *http://www.fisca.org/AM/Template.cfm?Section=Guidelines_to_Extended_Payment_Plan&Template=/MembersOnly.cfm&NavMenuID=642&ContentID=2249&DirectListComboInd=D* (last visited Jan. 15, 2016).

[78] For example, Press Release, Clarity Servs., *ACH Presentment Will Help Lenders Reduce Failed ACH Pulls* (Aug. 1, 2013), *https://www.clarityservices.com/clear-warning-ach-presentment-will-help-lenders-reduce-failed-ach-pulls/; Products*, Factor Trust, *http://ws.factortrust.com/products/ (last visited Apr. 8, 2016); Bank Account Verify Suite*, Microbilt, *http://www.microbilt.com/bank-account-verification.aspx (last visited Apr. 8, 2016); Sufficient Funds*, DataX, *http://www.dataxltd.com/ancillary-services/successful-collections/ (last visited Apr.8, 2016).*

Collection activity may involve further in-house attempts to collect from the borrower's bank account.[79] If the first attempt fails, the lender may make subsequent attempts at presentment by splitting payments into smaller amounts in hopes of increasing the likelihood of obtaining at least some funds, a practice for which the Bureau recently took enforcement action against a small-dollar lender.[80] Or, the lender may attempt to present the payment multiple times, a practice that the Bureau has noted in supervisory examinations.[81]

Eventually, the lender may attempt other means of collection. The Bureau is aware of in-house collections activities, either by storefront employees or by employees at a centralized collections division, including calls, letters, and visits to consumers and their workplaces,[82] as well as the selling of debt to third-party collectors.[83] The Bureau observed in its consumer complaint data that from November 2013 through December 2015 approximately 24,000 debt collection complaints had payday loan as the underlying debt. More than 10 percent of the complaints the Bureau has received about debt collection stem from payday loans.[84]

Some payday lenders sue borrowers who fail to repay their loans. A study of small claims court cases filed in Utah from 2005 to 2010 found that 38 percent of cases were attributable to payday loans.[85] A recent news report found that the majority of non-traffic civil cases filed in 14 Utah small claims courts are payday loan collection lawsuits and in one justice court the percentage was as high as 98.8 percent.[86] In 2013, the Bureau entered into a Consent Order with a large national payday and installment lender based, in part, on the filing of flawed court documents in about 14,000 debt collection lawsuits.[87]

Business model. As previously noted, the storefront payday industry has built a distribution model that involves a large number of small retail outlets, each serving a relatively small number of consumers. That implies that the overhead cost on a per consumer basis is relatively high.

Additionally, the loss rates on storefront payday loans—the percentage or amounts of loans that are charged off by the lender as uncollectible—are relatively high. Loss rates on payday loans often are reported on a per-loan basis but, given the frequency of rollovers and renewals, that metric understates the amount of principal lost to borrower defaults. For example, if a lender makes a $100 loan that is rolled over nine times, at which point the consumer defaults, the per-loan default rate would be 10 percent whereas the lender would have in fact lost 100 percent of the amount loaned. In this example, the lender would still have received substantial revenue, as the lender would have collected fees for each rollover prior to default. The Bureau estimates that during the 2011-2012 timeframe, charge-offs (*i.e.*, uncollectible loans defaulted on and never repaid) equaled nearly one-half of the average amount of outstanding loans during the year. In other words, for every $1.00 loaned, only $.50 in principal was eventually repaid.[88] One academic study found loss rates to be even higher.[89]

To sustain these significant costs, the payday lending business model is dependent upon a large volume of reborrowing—that is, rollovers, back-to-back loans, and reborrowing within a short period of paying off a previous loan—by those borrowers who do not default on their first loan. The Bureau's research found that over the course of a year, 90 percent of all loan fees comes from consumers who borrowed seven or more times and 75 percent comes from consumers who borrowed ten or more times.[90] Similarly, when the Bureau identified a cohort of borrowers and tracked them over ten months, the Bureau found that more than two-thirds of all loans were in sequences of at least seven loans, and that over half of all loans were in sequences of ten or more loans.[91] The Bureau defines a sequence as an initial loan plus one or more subsequent loans renewed within a period of time after repayment of the prior loan; a sequence thus captures not only rollovers and back-to-back loans but also re-borrowing that occurs within a short period of time after repayment of a prior loan either at the point at which a State-mandated cooling-off period ends or at the point at which the consumer, having repaid the prior loan, runs out of money.[92]

Other studies are broadly consistent. For example, a 2013 report based on lender data from Florida, Kentucky, Oklahoma, and South Carolina found that 85 percent of loans were made to borrowers with seven or more loans per year, and 62 percent of loans were made to borrowers with 12 or more loans per year.[93] These four States have restrictions on payday loans such as cooling-off periods and limits on rollovers that are enforced by State-regulated databases, as well as voluntary extended repayment plans.[94] An updated report on Florida payday loan usage derived from the State database noted this trend has continued with 83 percent of payday loans in 2015 made to borrowers with seven or more loans and 57 percent of payday loans that same year made to borrowers with 12 or more loans.[95] Other reports have found that over 80 percent of total payday loans and loan volume is due to repeat borrowing within thirty days of a prior loan.[96] One trade association has acknowledged that "[i]n any large, mature payday loan portfolio, loans to repeat borrowers generally constitute between 70 and 90 percent of the portfolio, and for some lenders, even more."[97]

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[79] For example, one payday lender stated in its public documents that it "subsequently collects a large percentage of these bad debts by redepositing the customers' checks, ACH collections or receiving subsequent cash repayments by the customers." First Cash Fin. Servs., 2014 Annual Report (Form 10-K), at 5 (Feb. 12, 2015), available at *https://www.sec.gov/Archives/edgar/data/840489/000084048915000012/fcfs1231201410-k.htm.*

[80] Press Release, Bureau of Consumer Fin. Prot., *CFPB Orders EZCORP to Pay $10 Million for Illegal Debt Collection Tactics* (Dec. 16, 2015), *http://www.consumerfinance.gov/newsroom/cfpb-orders-ezcorp-to-pay-10-million-for-illegal-debt-collection-tactics/.*

[81] *See* Bureau of Consumer Fin. Prot., *Supervisory Highlights*, at 20 (Spring 2014), *available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.*

[82] Bureau of Consumer Fin. Prot., *CFPB Compliance Bulletin 2015-07, In-Person Collection of Consumer Debt*, (Dec. 16, 2015), *http://files.consumerfinance.gov/f/201512_cfpb_compliance-bulletin-in-person-collection-of-consumer-debt.pdf.*

[83] For example, prior to discontinuing its payday lending operations, EZCorp indicated that it used a tiered structure of collections on defaulted loans (storefront employees, centralized collections, and then third-parties debt sales). EZCORP, Inc., 2014 Annual Report (Form 10-K) at 9 (Nov. 26, 2014), *available at https://www.sec.gov/Archives/edgar/data/876523/000087652314000102/a2014-10k9302014.htm*). Advance America utilized calls and letters to past-due consumers, as well as attempts to convert the consumer's check into a cashier's check, as methods of collection. Advance America, 2011 Annual Report (Form 10-K), at 11. For CFPB Consent orders, see ACE Cash Express, Inc., CFPB No. 2014-CFPB-0008, Consent Order (July 10, 2014), *available at* (*http://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf*) and EZCorp, CFPB No. 2015-CFPB-0031, Consent Order (Dec. 16, 2015), *available at* (*http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf*).

[84] Bureau of Consumer Fin. Prot., *Monthly Complaint Report*, at 12 (March 2016), *http://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-9.pdf.*

[85] Coalition of Religious Communities, *Payday Lenders and Small Claims Court Cases in Utah*, at 2, *available at http://www.consumerfed.org/pdfs/PDL-UTAH-court-doc.pdf.*

[86] Lee Davidson, *Payday Lenders Sued 7,927 Utahns Last Year*, The Salt Lake City Tribune (Dec. 20, 2015), *http://www.sltrib.com/home/3325528-155/payday-lenders-sued-7927-utahns-last.*

[87] Press Release, Bureau of Consumer Fin. Prot. *Consumer Financial Protection Bureau Takes Action Against Payday Lender for Robo-Signing* (Nov. 20, 2013), *http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-takes-action-against-payday-lender-for-robo-signing/.*

[88] Staff estimate based on public company financial statements and confidential information gathered in the course of the Bureau's statutory functions. Ratio of gross charged off loans to average balances, where gross charge-offs represent single-payment loan losses and average balance is the average of beginning and end of year single-payment loan receivables.

[89] Mark Flannery and Katherine Samolyk, at 16 (estimating annual charge-offs on storefront payday loans at 66.6 percent of outstandings).

[90] *CFPB Payday Loans and Deposit Advance Products White Paper*, at 22.

[91] *CFPB Report on Supplemental Findings*, at ch. 5.

[92] *CFPB Data Point: Payday Lending*, at 7. The Bureau's Data Point defined a sequence to encompass all loans made within 14 days of a prior loan. Other reports have proposed other definitions of sequence length including 30 days (Marc Anthony Fusaro & Patricia J. Cirillo, *Do Payday Loans Trap Consumers in a Cycle of Debt?*, at 12 (2011), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960776&download=yes*) and sequences based on the borrower's pay period (nonPrime 101, *Report 7B: Searching for Harm in Storefront Payday Lending*, at 4 n.9 (2016), *available at https://www.nonprime101.com/wp-content/uploads/2016/02/Report-7-B-Searching-for-Harm-in-Storefront-Payday-Lending-nonPrime101.pdf.*) *See* part Market Concerns—Short-Term Loans below for an additional discussion of these alternative definitions.

Market Concerns—Short-Term Loans below discusses the impact of these outcomes for consumers who are unable to repay and either default or reborrow.

Recent regulatory and related industry developments. A number of Federal and State regulatory developments have occurred over the last 15 years as concerns about the effects of payday lending have spread. Regulators have found that the industry has tended to shift to new models and products in response.

Since 2000, it has been clear from commentary added to Regulation Z, that payday loans constitute "credit" under the Truth in Lending Act (TILA) and that cost of credit disclosures are required to be provided in payday loan transactions, regardless of how State law characterizes payday loan fees.[98]

In 2006, Congress enacted the Military Lending Act (MLA) to address concerns that servicemembers and their families were becoming over-indebted in high-cost forms of credit.[99] The MLA, as implemented by the Department of Defense's regulation, imposes two broad classes of requirements applicable to a creditor. First, the creditor may not impose a military annual percentage rate[100] (MAPR) greater than 36 percent in connection with an extension of consumer credit to a covered borrower. Second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain information, both orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account, refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit. In 2007, the Department of Defense issued its initial regulation under the MLA, limiting the Act's application to closed-end loans with a term of 91 days or less in which the amount financed did not exceed $2,000; closed-end vehicle title loans with a term of 181 days or less; and closed-end tax refund anticipation loans.[101] However, the Department found that evasions developed in the market as "the extremely narrow definition of 'consumer credit' in the [then-existing rule] permits a creditor to structure its credit products in order to reduce or avoid altogether the obligations of the MLA."[102]

As a result, effective October 2015 the Department of Defense expanded its definition of covered credit to include open-end credit and longer-term loans so that the MLA protections generally apply to all credit subject to the requirements of Regulation Z of the Truth in Lending Act, other than certain products excluded by statute.[103] In general, creditors must comply with the new regulations for extensions of credit after October 3, 2016; for credit card accounts, creditors are required to comply with the new rule starting October 3, 2017.[104]

At the State level, the last States to enact legislation authorizing payday lending, Alaska and Michigan, did so in 2005.[105] At least eight States that previously had authorized payday loans have taken steps to restrict or eliminate payday lending. In 2001, North Carolina became the first State that had previously permitted payday loans to adopt an effective ban by allowing the authorizing statute to expire. In 2004, Georgia also enacted a law banning payday lending.

In 2008, the Ohio legislature adopted the Short Term Lender Act with a 28 percent APR cap, including all fees and charges, for short-term loans and repealed the existing Check-Cashing Lender Law that authorized higher rates and fees.[106] In a referendum later that year, Ohioans voted against reinstating the Check-Cashing Lender Law, leaving the 28 percent APR cap and the Short Term Lending Act in effect.[107] After the vote, some payday lenders began offering vehicle title loans. Other lenders continued to offer payday loans utilizing Ohio's Credit Service Organization Act[108] and the Mortgage Loan Act;[109] the latter practice was upheld by the State Supreme Court in 2014.[110]

In 2010, Colorado's legislature banned short-term single-payment balloon loans in favor of longer-term, six-month loans. Colorado's regulatory framework is described in more detail in the discussion of payday installment lending below.

As of July 1, 2010, Arizona effectively prohibited payday lending after the authorizing statute expired and a statewide referendum that would have continued to permit payday lending failed to pass.[111] However, small-dollar

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[93] Montezemolo, *Payday Lending Abuses and Predatory Practices,* at 13 tbl. 7.

[94] *Id.* at 12. For additional information on Florida loan use, see Veritec Solutions LLC, *State of Florida Deferred Presentment Program Through May 2012,* (2012), *available at http://geerservices.net/veritecs.com/wp-content/uploads/2013/07/2012-FL-Trend-Report1.pdf.*

[95] Brandon Coleman & Delvin Davis, Ctr. for Responsible Lending, *Perfect Storm: Payday Lenders Harm Florida Consumer Despite State Law,* at 4 (March 2016), *available* at *http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf.*

[96] Parrish & King, at 11-12.

[97] Letter from Hilary B. Miller, Esq. on behalf of Cmty. Fin. Servs. Ass'n. of America, to Bureau of Consumer Fin. Prot., *Petition of Community Financial Services Association of America, Ltd. For Retraction of "Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings,* at 5 (June 20, 2013), *available* at *http://files.consumerfinance.gov/f/201308_cfpb_cfsa-information-quality-act-petition-to-CFPB.pdf.*

[98] 12 CFR 1026.2(a)(14)-2.

[99] The Military Lending Act, part of the John Warner National Defense Authorization Act for Fiscal Year 2007, was signed into law in October 2006. The interest rate cap took effect October 1, 2007. *See* 10 U.S.C. 987.

[100] The military annual percentage rate is an "all-in" APR that includes a broader range of fees and charges than the APR that must be disclosed under the Truth in Lending Act. *See* 32 CFR 232.4.

[101] 72 FR 50580 (Aug. 31, 2007).

[102] 80 FR 43560, 43567 n.78 (July 22, 2015).

[103] 80 FR 43560 (July 22, 2015) (to be codified at 32 CFR Pt. 232), *available at https://www.gpo.gov/fdsys/pkg/FR-2015-07-22/pdf/2015-17480.pdf.*

[104] *Id.*

[105] Alaska Stat. §§ 06.50.010 through 06.50.900; Mich. Comp. Laws §§ 487.2121 through 487.2173.

[106] Ohio Rev. Code §§ 1321.35 and 1321.40.

[107] *Ohio Neighborhood Fin., Inc.* v. *Scott,* 139 Ohio St.3d 536, 2014-Ohio-2440, at 4-7, *available at https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2014/2014-ohio-2440.pdf (reported at* 13 NE.3d 1115).

[108] Ohio Rev. Code, Ch. § 4712.01.

[109] Ohio Rev. Code, Ch. § 1321.52(C).

[110] *See generally Ohio Neighborhood Fin., Inc.* v. *Scott,* 139 Ohio St.3d 536, 2014-Ohio-2440.

[111] Ariz. Rev. Stat. § 6-1263; Ariz. Sec'y of State, *State of Arizona Official Canvass,* at 15 (2008),

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lending activity continues in the State. The State financial regulator issued an alert in 2013, in response to complaints about online unlicensed lending, advising consumers and lenders that payday and consumer loans of $1,000 or less are generally subject to a rate of 36 percent per annum and loans in violation of those rates are void.[112] In addition, vehicle title loans continue to be made in Arizona as secondary motor vehicle finance transactions.[113] The number of licensed vehicle title lenders has increased by about 300 percent since the payday lending law expired and now exceeds the number of payday lenders that were licensed prior to the ban.[114]

In 2009, Virginia amended its payday lending law. It extended the minimum loan term to the length of two income periods, added a 45-day cooling-off period after substantial time in debt (the fifth loan in a 180-day period) and a 90-day cooling-off period after completing an extended payment plan, and implemented a database to enforce limits on loan amounts and frequency. The payday law applies to closed-end loans. Virginia has no interest rate regulations or licensure requirements for open-end credit.[115] After the amendments, a number of lenders that were previously licensed as payday lenders in Virginia and that offer closed-end payday loans in other States now operate in Virginia by offering open-end credit without a State license.[116]

Washington and Delaware have restricted repeat borrowing by imposing limits on the number of payday loans consumers may obtain. In 2009, Washington made several changes to its payday lending law. These changes, effective January 1, 2010, include a cap of eight loans per borrower from all lenders in a rolling 12-month period where there had been no previous limit on the number of total loans, an extended repayment plan for any loan, and a database to which that lenders are required to report all payday loans.[117] In 2013, Delaware, a State with no fee restrictions for payday loans, implemented a cap of five payday loans, including rollovers, in any 12-month period.[118] Delaware defines payday loans as loans due within 60 days for amounts up to $1,000. Some Delaware lenders have shifted from payday loans to longer-term installment loans with interest-only payments followed by a final balloon payment of the principal and an interest fee payment—sometimes called a "flexpay" loan.[119]

At least 35 Texas municipalities have adopted local ordinances setting business regulations on payday lending (and vehicle title lending).[120] Some of the ordinances, such as those in Dallas, El Paso, Houston, and San Antonio, include requirements such as limits on loan amounts (no more than 20 percent of the borrower's gross annual income for payday loans), limits on the number of rollovers, required amortization of the principal loan amount for repeat loans—usually in 25 percent increments, record retention for at least three years, and a registration requirement.[121] On a statewide basis, there are no Texas laws specifically governing payday lenders or payday loan terms; credit access businesses that act as loan arrangers or broker payday loans (and vehicle title loans) are regulated and subject to licensing, reporting, and requirements to provide consumers with disclosures about repayment and reborrowing rates.[122]

Online Payday and Hybrid Payday Loans

With the growth of the internet, a significant online payday lending industry has developed. Some storefront lenders use the internet as an additional method of originating payday loans in the States in which they are licensed to do business. In addition, there are now a number of lenders offering payday, and what are referred to as "hybrid" payday loans, exclusively through the internet. Hybrid payday loans are structured so that rollovers occur automatically unless the consumer takes affirmative action to pay off the loan, thus effectively creating a series of interest-only payments followed by a final balloon payment of the principal amount and an additional fee.[123] Hybrid loans with automatic rollovers would fall within the category of "covered longer-term loans" under the proposed rule as discussed more fully below.

Industry size, structure, and products. The online payday market size is difficult to measure for a number of reasons. First, many online lenders offer a variety of products including single-

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available at http://apps.azsos.gov/election/2008/General/Canvass2008GE.pdf; Arizona Attorney General's Office, *Operation Sunset FAQ, available at https://www.azag.gov/sites/default/files/sites/all/docs/consumer/op-sunset-FAQ.pdf.*

[112] Regulatory and Consumer Alert CL/CO-13-01 from Ariz. Dep't of Fin. Insts., to Consumers; Financial Institutions and Enterprises Conducting Business in Arizona, Arizona Department of Financial Institutions, *Regulatory and Consumer Alert, CL/CO-13-01, Unlicensed Consumer Lending Transactions* (Feb. 7, 2013), *http://www.azdfi.gov/LawsRulesPolicy/Forms/FE-AD-PO-Regulatory_and_Consumer_Alert_CL_CO_13_01%2002-06-2013.pdf*

[113] Ariz. Rev. Stat. §§ 44-281 and 44-291; *Frequently Asked Questions from Licensees, Question #6 "What is a Title Loan,"* Arizona Dept. of Fin. Insts., *http://www.azdfi.gov/Licensing/Licensing_FAQ.html#MVDSFC* (last visited Apr. 20, 2016).

[114] These include loans "secured" by borrowers' registrations of encumbered vehicles. Jean Ann Fox, Kelly Griffith, Tom Feltner, Consumer Fed'n of America and Ctr. for Econ. Integrity, *Wrong Way: Wrecked by Debt,* at 6, 8-9 (2016), *available at http://consumerfed.org/wp-content/uploads/2016/01/160126_wrongway_report_cfa-cei.pdf.*

[115] Va. Code Ann. § 6.2-312.

[116] *See, e.g., What We Offer,* CashNetUSA, *https://www.cashnetusa.com/what-we-offer.html* (Nov. 15, 2015). CashNetUSA is part of Enova, *https://www.enova.com/brands-services/cashnetusa/* (Nov. 15, 2015); Check Into Cash, *https://checkintocash.com/virginia-line-of-credit/* (Nov. 15, 2015); Allied Cash Advance ("VA: Loans made through open-end credit account.") *https://www.alliedcash.com/* (Nov. 15, 2015); Community Choice Financial through First Virginia Financial Services, *http://www.firstvirginialoans.com/loan-options/* (Nov. 15, 2015) (First Virginia is part of Community Choice, see "Our Brands" *http://ccfi.com/news/* (Nov. 15, 2015). For a list of payday lender license surrenders and dates of surrender, see *https://www.scc.virginia.gov/SCC-INTERNET/bfi/reg_inst/sur/pay_sur_0112.pdf* (Nov. 15, 2015).

[117] Wash., Dep't of Fin. Insts., *2010 Payday Lending Report,* at 3, *available at http://www.dfi.wa.gov/sites/default/files/reports/2010-payday-lending-report.pdf.*

[118] Del. Code Ann. 5 §§ 2227(7), 2235A(a)(1).

[119] *See, e.g., James* v. *National Financial, LLC,* No. C.A. 8931-VCL at 8, 65-67 (Del. Ch. Mar. 14, 2016), *available at http://courts.delaware.gov/opinions/list.aspx?ag=court%20of%20chancery* (reported at 132 A.3d 799).

[120] A description of the municipalities is available at Texas Municipal League. An additional 15 Texas municipalities have adopted land use ordinances on payday or vehicle title lending. *City Regulation of Payday and Auto Title Lenders,* Tex. Mun. League, *http://www.tml.org/payday-updates* (last visited May 6, 2016).

[121] Other municipalities have adopted similar ordinances. For example, at least seven Oregon municipalities, including Portland and Eugene, have enacted ordinances that include a 25 percent amortization requirement on rollovers and a requirement that lenders offer a no-cost payment plan after two rollovers. Portland, Or., Code § 7.26.050, Eugene Or., Code § 3.556.

[122] CABs must include a pictorial disclosure with the percentage of borrowers who will repay the loan on the due date and the percentage who will roll over (called renewals) various times. *See* State of Texas, Consumer Disclosure, *Payday Loan-Single Payment, available at http://occc.texas.gov/sites/default/files/uploads/disclosures/cab-disclosure-payday-single-011012.pdf.* The CABs, rather than the lenders, maintain storefront locations, and qualify borrowers, service and collect the loans for the lenders. CABs may also guaranty the loans. There is no cap on CAB fees and when these fees are included in the loan finance charges, the disclosed APRs for Texas payday and vehicle title loans are similar to those in other States with deregulated rates. *See* Ann Baddour, *Why Texas' Small Dollar Lending Market Matter,* 12 e-Perspectives Issue 2 (2012), *available at https://www.dallasfed.org/microsites/cd/epersp/2012/2_2.cfm.* In 2004, a Federal appellate court dismissed a putative class action related to these practices. *Lovick* v. *RiteMoney, Ltd.,* 378 F.3d 433 (5th Cir. 2004).

[123] nonPrime101, *Report 1: Profiling Internet Small Dollar Lending- Basic Demographics and Loan Characteristics,* at 2-3, (2014), *available at https://www.nonprime101.com/wp-content/uploads/2015/02/Profiling-Internet-Small-Dollar-Lending-Final.pdf.* The report refers to these automatic rollovers as "renewals."

payment loans (what the Bureau refers to as payday loans), longer-term installment loans, and hybrid loans; this poses challenges in sizing the portion of these firms' business that is attributable to payday and hybrid loans. Second, many online payday lenders are not publicly traded, resulting in little available financial information about this market segment. Third, many other online payday lenders claim exemption from State lending laws and licensing requirements, stating they are located and operated from other jurisdictions.[124] Consequently, these lenders report less information publicly, whether individually or in aggregate compilations, than lenders holding traditional State licenses. Finally, storefront payday lenders who are also using the online channel generally do not separately report their online originations. Bureau staff's reviews of the largest storefront lenders' Web sites indicate an increased focus in recent years on online loan origination.

With these caveats, a frequently cited industry analyst has estimated that by 2012 online payday loans had grown to generate nearly an equivalent amount of fee revenue as storefront payday loans on roughly 62 percent of the origination volume, about $19 billion, but originations had then declined somewhat to roughly $15.9 billion during 2015.[125] This trend appears consistent with storefront payday loans, as discussed above, and is likely related at least in part to increasing lender migration from short-term into longer-term products. Online payday loan fee revenue has been estimated for 2015 at $3.1 billion, or 19 percent of origination volume.[126] However, these estimates may be both over- and under-inclusive; they may not differentiate precisely between online lenders' short-term and longer-term loans, and they may not account for the online lending activities by storefront payday lenders.

Whatever its precise size, the online industry can broadly be divided into two segments: online lenders licensed in the State in which the borrower resides and lenders that are not licensed in the borrower's State of residence.

The first segment consists largely of storefront lenders with an online channel to complement their storefronts as a means of originating loans, as well as a few online-only payday lenders who lend only to borrowers in States where they have obtained State lending licenses. Because this segment of online lenders is State-licensed, State administrative payday lending reports include this data but generally do not differentiate loans originated online from those originated in storefronts. Accordingly, this portion of the market is included in the market estimates summarized above, and the lenders consider themselves to be subject to, or generally follow, the relevant State laws discussed above.

The second segment consists of lenders that claim exemption from State lending laws. Some of these lenders claim exemption because their loans are made from a physical location outside of the borrower's State of residence, including from an off-shore location outside of the United States. Other lenders claim exemption because they are lending from tribal lands, with such lenders claiming that they are regulated by the sovereign laws of federally recognized Indian tribes.[127] These lenders claim immunity from suit to enforce State or Federal consumer protection laws on the basis of their sovereign status.[128] A frequently cited source of data on this segment of the market is a series of reports using data from a specialty consumer reporting agency serving certain online lenders, most of whom are unlicensed.[129] These data are not representative of the entire online industry, but nonetheless cover a large enough sample (2.5 million borrowers over a period of four years) to be significant. These reports indicate the following concerning this market segment:

- Although the mean and median loan size among the payday borrowers in this data set are only slightly higher than the information reported above for storefront payday loans,[130] the online payday lenders charge higher rates than storefront lenders. As noted above, most of the online lenders reporting this data claim exemption from State laws and do not comply with State rate caps. The median loan fee in this data set is $23.53 per $100 borrowed, compared to $15 per $100 borrowed for storefront payday loans. The mean fee amount is even higher at $26.60 per $100 borrowed.[131] Another study based on a similar dataset from three online payday lenders is generally consistent, putting the range of online payday loan fees at between $18 and $25 per $100 borrowed.[132]
- More than half of the payday loans made by these online lenders are hybrid payday loans. As described above, a hybrid loan involves automatic rollovers with payment of the loan fee until a final balloon payment of the principal and fee.[133] For the hybrid payday loans, the most frequently reported payment amount is 30 percent of principal, implying a finance charge during each pay period of $30 for each $100 borrowed.[134]
- Unlike storefront payday loan borrowers who generally return to the same store to reborrow, the credit reporting data may suggest that online borrowers tend to move from lender to

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[124] For example, in 2015 the Bureau filed a lawsuit in Federal district court against NDG Enterprise, NDG Financial Corp., Northway Broker, Ltd., and others alleging that defendants illegally collected online payday loans that were void or that consumers had no obligations to repay, and falsely threatened consumers with lawsuits and imprisonment. Several defendants are Canadian corporations and others are incorporated in Malta. The case is pending. *See* Press Release, Bureau of Consumer Fin. Prot., *CFPB Sues Offshore Payday Lender* (Aug. 4, 2015), *http://www.consumerfinance.gov/newsroom/cfpb-sues-offshore-payday-lender/.*

[125] Hecht, *The State of Short-Term Credit Amid Ambiguity, Evolution and Innovation;* John Hecht, Jefferies LLC, *The State of Short-Term Credit in a Constantly Changing Environment* (2015); Jessica Silver-Greenberg, The New York Times, *Major Banks Aid in Payday Loans Banned by States* (Feb. 23, 2013) *http://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html.*

[126] Hecht, *The State of Short-Term Credit Amid Ambiguity, Evolution and Innovation.*

[127] According to a tribal trade association representative, about 30 tribes are involved in the payday lending industry. Julia Harte & Joanna Zuckerman Bernstein, AlJazeera America, *Payday Nation* (June 17, 2014) *http://projects.aljazeera.com/2014/payday-nation/.* The Bureau is unaware of other public sources for an estimate of the number of tribal lenders.

[128] *See* Great Plains Lending, L.L.C., CFPB No. 2013-MISC-Great Plains Lending-0001 (2013), *available at http://files.consumerfinance.gov/f/201309_cfpb_decision-on-petition_great-plains-lending-to-set-aside-civil-investigative-demands.pdf* (Sept. 26, 2013); First Amended Complaint, *Consumer Financial Protection Bureau* v. *CashCall, Inc. No. 13-cv-13167, 2014 WL 10321537 (D. Mass. March 21, 2014), available at http://files.consumerfinance.gov/f/201403_cfpb_amended-complaint_cashcall.pdf*; Order, Fed. Trade Comm'n v. AMG Services, Inc., No. 12-cv-00536, 2014 WL 910302 (D. Nev. Mar. 07, 2014), *available at https://www.ftc.gov/system/files/documents/cases/140319amgorder.pdf*; State *ex rel. Suthers* v. *Cash Advance & Preferred Cash Loans, 205 P.3d 389 (Colo. App. 2008), aff'd sub nom; Cash Advance & Preferred Cash Loans* v. *State,* 242 P.3d 1099 (Colo. 2010); *California* v. *Miami Nation Enterprises et a*l., 166 Cal.Rptr.3d 800 (2014).

[129] nonPrime101, *Report 1,* at 9.

[130] The median online payday loan size is $400, compared to a median loan size of $350 for storefront payday loans. *Id.* at 10.

[131] *Id.*

[132] G. Michael Flores, Bretton Woods, Inc.: *Online Short-Term Lending: Statistical Analysis Report,* at 15 (Feb. 28, 2014), *available at http://www.bretton-woods.com/media/a28fa8e9a85dce6fffff81bbffffd502.pdf.*

[133] nonPrime101, *Report 5: Loan Product Structures and Pricing in Internet Installment Lending,* at 4 (May 15, 2015), *available at https://www.nonprime101.com/wp-content/uploads/2015/05/Report-5-Loan-Product-Structures-1.3-5.21.15-Final3.pdf.* As noted above, these loans may also be called flexpay loans. Such loans would likely be covered longer-term loans under this proposal.

[134] nonPrime101, *Report 5: Loan Product Structures and Pricing in Internet Installment Lending* at 6.

lender. As discussed further below, however, it is difficult to evaluate whether some of this apparent effect is due to online lenders simply not consistently reporting lending activity.[135]

Marketing, underwriting, and collection practices. To acquire customers, online lenders have relied heavily on direct marketing and lead generators. Online lead generators purchase web advertising, usually in the form of banner advertisements or paid search results (the advertisements that appear at the top of an internet search on Google, Bing, or other search engines). When a consumer clicks through on a banner or search advertisement, she is usually prompted to complete a brief form with personal information that will be used to determine the loans for which she may qualify. If a lead generator is involved, the consumer's information becomes a lead that is in turn sold directly to a lender, to a reseller, or to a ''lender network'' that operates as an auction in which the lead is sold to the highest bidder. A consumer's personal information may be offered to multiple lenders and other vendors as a result of submitting a single form, raising significant privacy and other concerns.[136] In a survey of online payday borrowers, 39 percent reported that their personal or financial information was sold to a third party without their knowledge.[137]

From the Bureau's market outreach activities, it is aware that large payday and small-dollar installment lenders using lead generators for high quality, ''first look'' or high-bid leads have paid an average cost per new account of between $150 and $200. Indeed, the cost to a lender simply to purchase such leads can be $100 or more.[138] Customer acquisition costs reflect lead purchase prices. One online lender reported its customer acquisition costs to be $297, while in 2015 another spent 25 percent of its total marketing expenditures on customer acquisition, including lead purchases.[139]

Online lenders view fraud (*i.e.*, consumers who mispresent their identity) as a significant risk and also express concerns about ''bad faith'' borrowing (*i.e.*, consumers with verified identities who borrow without the intent to repay).[140] Consequently, online payday and hybrid lenders attempt to verify the borrower's identity and the existence of a bank account in good standing. Several specialty consumer reporting agencies have evolved primarily to serve the online payday lending market. The Bureau is aware from market outreach that these lenders also generally report loan closure information on a real-time or daily basis to the specialty consumer reporting agencies. In addition, some online lenders report to the Bureau they use nationwide credit report information to evaluate both credit and potential fraud risk associated with first-time borrowers, including recent bankruptcy filings. However, there is evidence that online lenders do not consistently utilize credit report data for every loan, and instead typically check and report data only for new borrowers or those returning after an extended absence from the lender's records.[141]

Typically, proceeds from online payday loans are disbursed electronically to the consumer's bank account. The consumer authorizes the lender to debit her account as payments are due. If the consumer does not agree to authorize electronic debits, lenders generally will not disburse electronically, but instead will require the consumer to wait for a paper loan proceeds check to arrive in the mail.[142] Lenders may also charge higher interest rates or fees to consumers who do not commit to electronic debits.[143]

Unlike storefront lenders that seek to bring consumers back to the stores to make payments, online lenders collect via electronic debits. Online payday lenders, like their storefront counterparts, use various models and software, described above, to predict when an electronic debit is most likely to succeed in withdrawing funds from a borrower's bank account. As discussed further below, the Bureau has observed lenders seeking to collect multiple payments on the same day. Lenders may be dividing the payment amount in half and presenting two debits at once, presumably to reduce the risk of a larger payment being returned for nonsufficient funds. Indeed, the Bureau found that about one-third of presentments by online payday lenders occur on the same day as another request by the same lender. The Bureau also found that split presentments almost always result in either payment of all presentments or return of all presentments (in which event the consumer will likely incur multiple nonsufficient funds (NSF) fees from the bank). The Bureau's study indicates that when an online payday lender's first attempt to obtain a payment from the consumer's account is unsuccessful, it will make a second attempt 75 percent of the time and if that attempt fails the lender will make a third attempt 66 percent of the time.[144] As discussed further at part II.D, the success rate on these subsequent attempts is relatively low, and the cost to consumers may be correspondingly high.[145]

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[135] nonPrime101, *Report 7-A: How Persistent is the Borrower-Lender Relationship in Payday Lending* (2015), *available at https://www.nonprime101.com/wp-content/uploads/2015/10/Report-7A-How-Persistent-Is-the-Borrow-Lender-Relationship_1023151.pdf.*

[136] In October 2015 the Federal Trade Commission (FTC) held a workshop on online lead generators and how they operate in a number of industries. The transcript from the workshop is available at: *https://www.ftc.gov/system/files/documents/videos/follow-lead-ftc-workshop-lead-generation-part-1/ftc_lead_generation_workshop_-_transcript_segment_1.pdf.*

[137] Pew Charitable Trusts, *Payday Lending in America Report 4: Fraud and Abuse Online: Harmful Practices in Internet Payday Lending,* at 11-12, (2014), *available at http://www.pewtrusts.org/~/media/assets/2014/10/payday-lending-report/fraud_and_abuse_online_harmful_practices_in_internet_payday_lending.pdf.*

[138] The high lead cost reflects both the value lenders place on new accounts (what they are willing to bid for the leads) and, in turn, the advertising costs that lead sellers incur in order to generate an actionable lead. For example, one report lists the advertising costs of a click-through on a sponsored search advertisement for the search phrase ''payday loan'' as ranging from $5 to $9 at a point in time in 2014. Pew Charitable Trusts, *Payday Lending in America Report 4,* at 7. These costs were captured by market research firms SpyFu, SEMRush, and KeywordSpy on February 18, 2014. A click-through only results in a live lead when a potential borrower has completed an applicant form. One internet advertising executive at a recent FTC workshop on online lead generation estimated that approximately one in 10 click-throughs result in a live lead, though this finding is not specific to payday loans. FTC, *Lead Generation Workshop Transcript*. This conversion rate brings the lead generator's advertising cost per lead to $50-$90. A lender seeking to directly acquire its own borrowers competes for the same advertising space in sponsored searches or online banner advertisements (bidding up the cost per click-through) and likely incurs similar advertising costs for each new borrower.

[139] Elevate Credit Inc., Registration Statement (Form S-1), at 12 (Nov. 9, 2015), *available* at *https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm*; Enova Int'l Inc., 2015Annual Report (Form 10-K), at 103 (Mar. 7, 2016), *https://www.sec.gov/Archives/edgar/data/1529864/000156459016014129/enva-10k_20151231.htm.*

[140] For example, Enova states that it uses its own analysis of previous fraud incidences and third party data to determine if applicant information submitted matches other indicators and whether the applicant can authorize transactions from the submitted bank account. In addition, it uses proprietary models to predict fraud. Enova Int'l Inc., 2015 Annual Report (Form 10-K), at 8.

[141] *See* Flores, Bretton Woods, *2014 Statistical Report,* at 5; the Bureau's market outreach with lenders and specialty consumer reporting agencies.

[142] For example, see Mobiloans, *Line of Credit Terms and Conditions, www.mobiloans.com/terms-and-conditions* (last visited Feb. 5, 2016) (''If you do not authorize electronic payments from your Demand Deposit Account and instead elect to make payments by mail, you will receive your Mobiloans Cash by check in the mail.''

[143] Under the Electronic Fund Transfer Act (EFTA) and its implementing regulation (Regulation E), lenders cannot condition the granting of credit on a consumer's repayment by preauthorized (recurring) electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. 12 CFR 1005.10(e). The summary in the text of current lender practices is intended to be purely descriptive. The Bureau is not addressing in this rulemaking the question of whether any of the practices described in text are consistent with EFTA.

There is limited information on the extent to which online payday lenders that are unable to collect payments through electronic debits resort to other collection tactics.[146] The available evidence indicates, however, that online lenders sustain higher credit losses and risk of fraud than storefront lenders. One lender with publicly available financial information that originated both storefront and online single-payment loans reported in 2014, a 49 percent and 71 percent charge-off rate, respectively, for these loans.[147] Online lenders generally classify as "fraud" both consumers who misrepresented their identity in order to obtain a loan and consumers whose identity is verified but default on the first payment due, which is viewed as reflecting the intent not to repay.

Business model. While online lenders tend to have fewer costs relating to operation of physical facilities than do storefront lenders, as discussed above, they face high costs relating to lead acquisition, loan origination screening to verify applicant identity, and potentially larger losses due to fraud than their storefront competitors.

Accordingly, it is not surprising that online lenders—like their storefront counterparts—are dependent upon repeated reborrowing. Indeed, even at a cost of $25 or $30 per $100 borrowed, a typical single online payday loan would generate fee revenue of under $100, which is not sufficient to cover the typical origination costs discussed above. Consequently, as discussed above, hybrid loans that roll over automatically in the absence of affirmative action by the consumer account for a substantial percentage of online payday business. These products effectively build a number of rollovers into the loan. For example, the Bureau has observed online payday lenders whose loan documents suggest that they are offering a single-payment loan but whose business model is to collect only the finance charges due, roll over the principal, and require consumers to take affirmative steps to notify the lender if consumers want to repay their loans in full rather than allowing them to roll over. The Bureau recently initiated an action against an online lender alleging that it engaged in deceptive practices in connection with such products.[148] In a recent survey conducted of online payday borrowers, 31 percent reported that they had experienced loans with automatic renewals.[149]

As discussed above, a number of online payday lenders claim exemption from State laws and the limitations established under those laws. As reported by a specialty consumer reporting agency with data from that market, more than half of the payday loans for which information is furnished to it are hybrid payday loans with the most common fee being $30 per $100 borrowed, twice the median amount for storefront payday loans.[150]

Similar to associations representing storefront lenders as discussed above, a national trade association representing online lenders includes loan repayment plans as one of its best practices, but does not provide many details in its public material.[151] A trade association that represents tribal online lenders has adopted a set of best practices but they do not address repayment plans.[152]

Single-Payment Vehicle Title Loans

Vehicle title loans—also known as "automobile equity loans"—are another form of liquidity lending permitted in certain States. In a title loan transaction, the borrower must provide identification and usually the title to the vehicle as evidence that the borrower owns the vehicle "free and clear." [153] Unlike payday loans, there is generally no requirement that the borrower have a bank account, and some lenders do not require a copy of a paystub or other evidence of income.[154] Rather than holding a check or ACH authorization for repayment as with a payday loan, the lender generally retains the vehicle title or some other form of security interest that provides it with the right to repossess the vehicle, which may then be sold, with the proceeds used for repayment.[155]

The lender retains the vehicle title or some other form of security interest during the duration of the loan, while the borrower retains physical possession of the vehicle. In some States the lender files a lien with State officials to record and perfect its interest in the vehicle or the lender may charge a fee for non-filing insurance. In a few States, a clear vehicle title is not required and vehicle title loans may be made as secondary liens against the title or against the borrower's automobile registration.[156] In Georgia, vehicle title loans are made under the State's pawnbroker statute that specifically permits borrowers to pawn vehicle certificates of title.[157] Almost all vehicle title lending is conducted at storefront locations, although some title lending does occur online.[158]

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[144] *See generally CFPB Online Payday Loan Payments,* at 14.

[145] Because these online lenders may offer single-payment payday, hybrid, and installment loans, reviewing the debits does not necessarily distinguish the type of loan involved. Storefront payday lenders were not included. *Id.* at 7, 13.

[146] One publicly-traded online-only lender that makes single-payment payday loans as well as online installment loans and lines of credit reports that its call center contacts borrowers by phone, email, and in writing after a missed payment and periodically thereafter and that it also may sell uncollectible charged off debt. Enova Int'l Inc., 2015 Annual Report (Form, 10-K), at 9 (Mar. 7, 2016), *available at https://www.sec.gov/Archives/edgar/data/1529864/000156459016014129/enva-10k_20151231.htm.*

[147] Net charge-offs over average balance based on data from Cash America and Enova Form 10-Ks. *See* Cash America Int'l, Inc., 2014 Annual Report (Form 10-K) at 102 (Mar. 13, 2015), *available at https://www.sec.gov/Archives/edgar/data/807884/000080788415000012/a201410-k.htm*; Enova Int'l Inc., 2014 Annual Report (Form 10-K) at 95 (Mar. 20, 2015), *available at https://www.sec.gov/Archives/edgar/data/1529864/000156459015001871/enva-10k_20141231.htm.* Net charge-offs represent single-payment loan losses less recoveries for the year. Averages balance is the average of beginning and end of year single-payment loan receivables. Prior to November 14, 2014, Enova comprised the e-commerce division of Cash America. Using the 2014 10-Ks allows for a better comparison of payday loan activity, than the 2015 10-Ks, as Cash America's payday loan operations declined substantially after 2014.

[148] Press Release, Bureau of Consumer Fin. Prot., *CFPB Takes Action Against Online Lender for Deceiving Borrowers* (Nov. 18, 2015), *http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-online-lender-for-deceiving-borrowers/*. The FTC raised and resolved similar claims against online payday lenders. *See* Press Release, FTC, *FTC Secures $4.4 Million From Online Payday Lenders to Settle Deception Charges* (Jan. 5, 2016), *https://www.ftc.gov/news-events/press-releases/2016/01/ftc-secures-44-million-online-payday-lenders-settle-deception.*

[149] The Pew Charitable Trusts, *Payday Lending in America Report 4,* at 8.

[150] nonprime*101, Report 5: Loan Product Structures and Pricing in Internet Installment Lending,* at 4, 6; *CFPB Payday Loans and Deposit Advance Products White Paper,* at 16.

[151] Online Lenders Alliance, *Best Practices* at 27 (March 2016), *available at http://onlinelendersalliance.org/wp-content/uploads/2016/03/Best-Practices-2016.pdf.* The materials state that its members "shall comply" with any required State repayment plans; otherwise, if a borrower is unable to repay a loan according to the loan agreement, the trade association's members "should create" repayment plans that "provide flexibility based on the customer's circumstances."

[152] *Best Practices,* Native American Financial Services Association, *http://www.mynafsa.org/best-practices/* (last visited Apr. 20, 2016).

[153] Arizona also allows vehicle title loans to be made against as secondary motor vehicle finance transactions. Ariz. Rev. Stat. §§ 44-281, 44-291G; Arizona Dept. of Fin. Inst., *Frequently Asked Questions from Licensees, Question #6 "What is a Title Loan," http://www.azdfi.gov/Licensing/Licensing_FAQ.html#MVDSFC*

[154] See *FAQ,* Fast Cash Title Loans, *http://fastcashvirginia.com/faq/* (last visited Mar. 3, 2016) ("There is no need to have a checking account to get a title loan."); *How Title Loans Work,* Title Max, *https://www.titlemax.com/how-it-works/* (last visited Jan. 15, 2016) (borrowers need a vehicle title and government issued identification plus any additional requirements of State law).

[155] *See* Speedy Cash, "*Title Loan FAQ's," https://www.speedycash.com/faqs/title-loans/* (last visited Mar. 29, 2016) (title loans are helpful "when you do not have a checking account to secure your loan. . . .your car serves as collateral for your loan.").

Product definition and regulatory environment. There are two types of vehicle title loans: Single-payment loans and installment loans. Of the 25 States that permit some form of vehicle title lending, seven States permit only single-payment title loans, 13 States allow the loans to be structured as single-payment or installment loans, and five permit only title installment loans.[159] (Installment title loans are discussed in more detail below.) All but three of the States that permit some form of title lending (Arizona, Georgia, and New Hampshire) also permit payday lending.

Single-payment vehicle title loans are typically due in 30-days and operate much like payday loans: The consumer is charged a fixed price per $100 borrowed and when the loan is due the consumer is obligated to repay the full amount of the loan plus the fee but is typically given the opportunity to roll over or reborrow.[160] The Bureau recently studied anonymized data from vehicle title lenders, consisting of nearly 3.5 million loans made to over 400,000 borrowers in 20 States. For single-payment vehicle title loans with a typical duration of 30 days, the median loan amount is $694 with a median APR of 317 percent, and the average loan amount is $959 and the average APR is 291 percent.[161] Two other studies contain similar findings.[162] Vehicle title loans are therefore for larger amounts than typical payday loans but carry similar APRs for similar terms.

Some States that authorize vehicle title loans limit the rates lenders may charge to a percentage or dollar amount per one hundred dollars borrowed, similar to some State payday lending pricing structures. A common fee limit is 25 percent of the loan amount per month, but roughly half of the authorizing States have no restrictions on rates or fees.[163] Some, but not all, States limit the maximum amount that may be borrowed to a fixed dollar amount, a percentage of the borrower's monthly income (50 percent of the borrower's gross monthly income in Illinois), or a percentage of the vehicle's value.[164] Some States limit the initial loan term to one month, but several States authorize rollovers, including automatic rollovers arranged at the time of the original loan.[165] Unlike payday loan regulation, few States require cooling-off periods between loans or optional extended repayment plans for borrowers who cannot repay vehicle title loans.[166] State vehicle title regulations sometimes address default, repossession and related fees; any cure periods prior to and after repossession, whether the lender must refund any surplus after the repossession and sale or disposition of the vehicle, and whether the borrower is liable for any deficiency remaining after sale or disposition.[167] Some States have imposed limited requirements that lenders consider a borrower's ability to repay. For example, both Utah and South Carolina require lenders to consider borrower ability to repay, but this may be accomplished through a borrower affirming that she has provided accurate financial information and has the ability to repay.[168] Nevada requires lenders to consider borrower ability to repay and obtain borrower affirmation of their ability to repay.[169] Missouri requires that lenders consider borrower financial ability to reasonably repay the loan under the loan's contract, but does not specify how lenders may satisfy this requirement.[170]

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[156] *See, e.g.,* discussion about Arizona law applicable to vehicle title lending above.

[157] Ga. Code § 44-12-131 (2015).

[158] For example, see the Bureau's action involving Wilshire Consumer Credit for illegal collection practices. Consumers primarily applied for Wilshire's vehicle title loans online. Press Release, Bureau of Consumer Fin. Prot., *CFPB Orders Indirect Auto Finance Company to Provide Consumers $44.1 Million in Relief for Illegal Debt Collection Tactics* (Oct. 1, 2015), *http://www.consumerfinance.gov/newsroom/cfpb-orders-indirect-auto-finance-company-to-provide-consumers-44-1-million-in-relief-for-illegal-debt-collection-tactics/. See also* State actions against Liquidation, LLC dba Sovereign Lending Solutions, LLC and other names, purportedly organized in the Cook Islands, New Zealand, by Oregon, Michigan and Pennsylvania. Press Release, Oregon Dep't of Justice, *AG Rosenblum and DCBS Sue Predatory Title Loan Operator* (Aug. 18, 2015), *http://www.doj.state.or.us/releases/Pages/2015/rel081815.aspx*; Press Release, Michigan Attorney General, *Schuette Stops Collections by High Interest Auto Title Loan Company* (Jan. 26, 2016), *http://www.michigan.gov/ag/0,4534,7-164-46849-374883--,00.html*; Press Release, Pennsylvania Dep't of Banking and Securities, *Consumers Advised about Illegal Auto Title Loans Following Court Decision* (Feb. 3, 2016), *http://www.media.pa.gov/pages/banking_details.aspx?newsid=89*; Press Release, North Carolina Dep't of Justice, *Online Car Title Lender Banned from NC for Unlawful Loans, AG Says* (May 2, 2016), *http://ncdoj.com/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Online-car-title-lender-banned-from-NC-for-unlawfu.aspx.* Consumers applied for the title loans online and sent their vehicle titles to the lender. The lender used local agents for repossession services.

[159] Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences,* at 4 (2015), *available at http://www.pewtrusts.org/~/media/Assets/2015/03/AutoTitleLoansReport.pdf?la=en.*

[160] *Id.* at 5; Susanna Montezemolo, Ctr. for Responsible Lending, *Car-Title Lending: The State of Lending in America & its Impact on U.S. Households,* at 6 (2013), *available at http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf. See also* Idaho Dep't of Fin., *Idaho Credit Code "Fast Facts" With Fiscal and Annual Report Data as of January 1, 2015, available at https://www.finance.idaho.gov/ConsumerFinance/Documents/Idaho-Credit-Code-Fast-Facts-With-Fiscal-Annual-Report-Data-01012016.pdf*; Tennessee Dep't of Fin. Insts., Financial Institutions, *2016 Report on the Title Pledge Industry,* at 4 (2016), *available at http://www.tennessee.gov/assets/entities/tdfi/attachments/Title_Pledge_Report_2016_Final_Draft_Apr_6_2016.pdf.*

[161] *CFPB Single-Payment Vehicle Title Lending,* at 7.

[162] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 3 (average loan is $1,000, most common APR is a one-month title loan is 300 percent); Montezemolo, *The State of Lending in America,* at 3.

[163] States with a 15 percent to 25 percent per month cap include Alabama, Georgia (rate decreases after 90 days), Mississippi, and New Hampshire; Tennessee limits interest rates to 2 percent per month, but also allows for a fee up to 20 percent of the original principal amount. Virginia's fees are tiered at 22 percent per month for amounts up to $700 and then decrease on larger loans. Ala. Code § 5-19A-7(a), Ga. Code Ann. § 44-12-131(a)(4), Miss. Code Ann. § 75-67-413(1), N.H. Rev. Stat. Ann. § 399-A:18(I)(f), Tenn. Code Ann. § 45-15-111(a), Va. Code Ann. § 6.2-2216(A).

[164] For example, some maximum vehicle title loan amounts are $2,500 in Mississippi, New Mexico, and Tennessee, and $5,000 in Missouri. Illinois limits the loan to $4,000 or 50 percent of monthly income, Virginia and Wisconsin limit the loan amount to 50 percent of the vehicle's value and Wisconsin also has a $25,000 maximum loan amount. Examples of States with no limits on loan amounts, limits of the amount of the value of the vehicle, or statutes that are silent about loan amounts include Arizona, Idaho, South Dakota, and Utah. Miss. Code Ann. § 75-67-415(f), N.M. Stat. Ann. § 58-15-3(A), Tenn. Code Ann. § 45-15-115(3), Mo. Rev. Stat. § 367.527(2), Ill. Admin. Code tit. 38, § 110.370(a), Va. Code Ann. § 6.2-2215(1)(d); Wis. Stat. § 138.16(1)(c), (2)(a), Ariz. Rev. Stat. Ann. § 44-291(A), Idaho Code Ann. § 28-46-508(3), S.D. Codified Laws § 54-4-44, Utah Code Ann. § 7-24-202(3)(c).

[165] States that permit rollovers include Delaware, Georgia, Idaho, Illinois, Mississippi, Missouri, Nevada, New Hampshire, South Dakota, Tennessee, and Utah. Idaho and Tennessee limit title loans to 30 days but allow automatic rollovers and require a principal reduction of 10 percent and 5 percent respectively, starting with the third rollover. Virginia prohibits rollovers and requires a minimum loan term of at least 120 days. Del. Code Ann. tit. 5, § 2254 (rollovers may not exceed 180 days from date of fund disbursement), Ga. Code Ann. § 44-12-138(b)(4), Idaho Code Ann. § 28-46-506(1) & (3), Ill. Admin. Code tit. 38, § 110.370(b)(1) (allowing refinancing if principal is reduced by 20%), Miss. Code Ann. § 75-67-413(3), Mo. Rev. Stat. § 367.512(4), Nev. Rev. Stat. § 604A.445(2), N.H. Rev. Stat. Ann. § 399-A:19(II) (maximum of 10 rollovers), S.D. Codified Laws § 54-4-71, Tenn. Code Ann. § 45-15-113(a), Utah Code Ann. § 7-24-202(3)(a), Va. Code Ann. § 6.2-2216(F).

[166] Illinois requires 15 days between title loans. Delaware requires title lenders to offer a workout agreement after default but prior to repossession that repays at least 10 percent of the outstanding balance each month. Delaware does not cap fees on title loans and interest continues to accrue on workout agreements. Ill. Admin. Code tit. 38, § 110.370(c); Del. Code Ann. 5 §§ 2255 & 2258 (2015).

[167] For example, Georgia allows repossession fees and storage fees. Arizona, Delaware, Idaho, Missouri, South Dakota, Tennessee, Utah, Virginia, and Wisconsin specify that any surplus must be returned to the borrower. Mississippi requires that 85 percent of any surplus be returned. Ga. Code Ann. § 44-12-131(a)(4)(C), Ariz. Rev. Stat. Ann. § 47-9608(A)(4), Del. Code Ann. tit. 5, § 2260, Idaho Code Ann. § 28-9-615(d), Mo. Rev. Stat. § 408.553, S.D. Codified Laws § 54-4-72, Tenn. Code Ann. § 45-15-114(b)(2), Utah Code Ann. § 7-24-204(3), Va. Code Ann. § 6.2-2217(C), Wis. Stat. § 138.16(4)(e), Miss. Code Ann. § 75-67-411(5).

Industry size and structure. Information about the vehicle title market is more limited than with respect to the payday industry because there are currently no publicly traded vehicle title loan companies, most payday lending companies that offer vehicle title loans are not publicly traded, and less information is generally available from State regulators and other sources.[171] One national survey conducted in June 2013 found that 1.1 million households reported obtaining a vehicle title loan over the preceding 12 months.[172] Another study extrapolating from State regulatory reports estimates that about two million Americans use vehicle title loans annually.[173] In 2014, vehicle title loan originations were estimated at $2.4 billion with revenue estimates of $3 to $5.6 billion.[174] These estimates may not include the full extent of vehicle title loan expansion by payday lenders.

There are approximately 8,000 title loan storefront locations in the United States, about half of which also offer payday loans.[175] Three privately held firms dominate the vehicle title lending market and together account for about 3,200 stores in about 20 States.[176] These lenders are concentrated in the southeastern and southwestern regions of the country.[177] In addition to the large title lenders, smaller vehicle title lenders are estimated to have about 800 storefront locations,[178] and as noted above several companies offer both title loans and payday loans.[179] The Bureau understands that for some firms for which the core business had been payday loans, the volume of vehicle title loan originations now exceeds payday loan originations.

State loan data also show vehicle title loans are growing rapidly. The number of borrowers in Illinois taking vehicle title loans increased 78 percent from 2009 to 2013, the most current year for which data are available.[180] The number of title loans taken out in California increased 178 percent between 2011 and 2014.[181] In Virginia, between 2011 and 2014, the number of motor vehicle title loans made increased by 21 percent while the number of individual consumers taking title loans increased by 25 percent.[182] In addition to the growth in loans made under Virginia's vehicle title law, a series of reports notes that some Virginia title lenders are offering "consumer finance" installment loans without the corresponding consumer protections of the vehicle title lending law and, accounting for about "a quarter of the money loaned in Virginia using automobile titles as collateral."[183] In Tennessee, the number of licensed vehicle title (title pledge) locations at year-end has been measured yearly since 2006. The number of locations peaked in 2014 at 1,071, 52 percent higher than the 2006 levels. In 2015, the number of locations declined to 965. However, in each year since 2013, the State regulator has reported more licensed locations than existed prior to the State's title lending regulation, the Tennessee Title Pledge Act.[184]

Vehicle title loan storefront locations serve a relatively small number of customers. One study estimates that the average vehicle title loan store made 227 loans per year, not including rollovers.[185] Another study using data from four States and public filings from the largest vehicle title lender estimated that the average vehicle title loan store serves about 300 unique borrowers per year—or slightly more than one unique borrower per business day.[186] The same report estimated that the largest vehicle title lender had 4.2 employees per store.[187] But, as mentioned, a number of large payday firms offer both products from the same storefront and may use the same employees to do so. In addition, small vehicle title lenders are likely to have fewer employees per location than do larger title lenders.

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[168] Utah Code Ann. § 7-24-202. S.C. Code Ann. § 37-3-413(3).

[169] Nev. Rev. Stat. § 640A.450(3).

[170] Mo. Rev. Stat § 367.525(4).

[171] A trade association representing several larger title lenders, the American Association of Responsible Auto Lenders, does not have a public-facing Web site but has provided the Bureau with some information about the industry.

[172] FDIC, *2013 Unbanked and Underbanked Survey,* at 93.

[173] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 1, citing among other sources the 2013 FDIC National Survey of Unbanked and Underbanked Households. Pew's estimate includes borrowers of single-payment and installment vehicle title loans. The FDIC's survey question did not specify any particular type of title loan.

[174] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 1; Ctr. for Fin. Servs. Innovation, *2014 Underserved Market Size: Financial Size: Financial Health Opportunity in Dollars and Cents* (2015) (on file and available from Center for Financial Services Innovation Web site at no charge with registration).

[175] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 1, 33 n.7.

[176] The largest vehicle title lender is TMX Finance, LLC formally known as Title Max Holdings, LLC with about 1,400 stores in 17 States. It was publicly-traded until 2013 when it was taken private. Its last 10-K reported annual revenue of $656.8 million. TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 21 (Mar. 27, 2013), *available at, http://www.sec.gov/Archives/edgar/data/1511967/000110465913024898/a12-29657_110k.htm* (year ended Dec. 31, 2012). For TMX Finance store counts see *Store Locations,* TMX Finance Careers, *https://www.tmxcareers.com/store-locations/* (last visited May 10, 2016). Community Loans of America has almost 900 stores and Select Management Resources has about 700 stores. Fred Schulte, Public Integrity, *Lawmakers protect title loan firms while borrowers pay sky-high interest rates* (Dec. 9, 2015), *http://www.publicintegrity.org/2015/12/09/18916/lawmakers-protect-title-loan-firms-while-borrowers-pay-sky-high-interest-rates.*

[177] Fred Schulte, Public Integrity, *Lawmakers protect title loan firms while borrowers pay sky-high interest rates* (Dec. 9, 2015).

[178] State reports supplemented with estimates from Center for Responsible Lending, revenue information from public filings and from non-public sources. *See* Montezemolo, *Car-Title Lending: The State of Lending in America.*

[179] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 1.

[180] Ill. Dep't. of Fin. & Prof. Reg., *Illinois Trends 2013 Report,* at 6.

[181] Compare 38,148 vehicle title loans in CY 2011 to 106,373 in CY 2014. California Dep't of Corps., *2011 Annual Report Operation of Finance Companies Licensed under the California Finance Lenders Law,* at 12 (2012), *available at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/CFL2011ARC.pdf;* California Department of Business Oversight, *2014 Annual Report Operation of Finance Companies Licensed Under the California Finance Lenders Law,* at 13 (2014), *available at http://www.dbo.ca.gov/Press/press_releases/2015/CFLL_Annual_Report_2014.pdf.*

[182] Va. State Corp. Comm'n, *The 2014 Annual Report of the Bureau of Financial Institutions, Payday Lender Licensees, Check Cashers, Motor Vehicle Title Lender Licensees Operating in Virginia at the Close of Business December 31, 2014,* at 71 (2014), *available at http://www.scc.virginia.gov/bfi/annual/ar04-14.pdf.* Because Virginia vehicle title lenders are authorized by State law to make vehicle title loans to residents of other States, the data reported by licensed Virginia vehicle title lenders may include loans made to out-of-State residents.

[183] Michael Pope, *How Virginia Became the Region's Hub For High-Interest Loans,* WAMU (Oct. 6, 2015), *http://wamu.org/news/15/10/06/how_virginia_became_the_regional_leader_for_car_title_loans.*

[184] Tennessee Dep't of Fin. Institutions, *2014 Report on the Title Pledge Industry,* at 1 (2014), *available at http://www.tennessee.gov/assets/entities/tdfi/attachments/Title_Pledge_Report_2014.pdf;* Tennessee Dep't of Fin. Institutions, *2016 Report on the Title Pledge Industry,* at 2.

[185] Ctr. for Responsible Lending, *The State of Lending in America and its Impact on U.S. Households,* at 133 (2013), *available at http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf*

[186] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 5. The four States were Mississippi, Tennessee, Texas, and Virginia. The public filing was from TMX Finance, the largest lender by store count. *Id.* at 35 n.37.

[187] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 22. The estimate is based on TMX Finance's total store and employee count reported in its Form 10-K as of the end of 2012 (1,035 stores and 4,335 employees). TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 3, 6. The calculation does not account for employees at centralized non-storefront locations.

Marketing, underwriting, and collections practices. Vehicle title loans are marketed to appeal to borrowers with impaired credit who seek immediate funds. The largest vehicle title lender described title loans as a "way for consumers to meet their liquidity needs" and described their customers as those who "often . . . have a sudden and unexpected need for cash due to common financial challenges."[188] Advertisements for vehicle title loans suggest that title loans can be used "to cover unforeseen costs this month . . . .[if] utilities are a little higher than you expected," if consumers are "in a bind," for a "short term cash flow" problem, or for "fast cash to deal with an unexpected expense."[189] Vehicle title lenders advertise quick loan approval "in as little as 15 minutes."[190] Some lenders offer promotional discounts for the initial loan and bonuses for referrals,[191] for example, a $100 prepaid card for referring friends for vehicle title loans.[192]

The underwriting policies and practices that vehicle title lenders use vary and may depend on such factors as State law requirements and individual lender practices. As noted above, some vehicle title lenders do not require borrowers to provide information about their income and instead rely on the vehicle title and the underlying collateral that may be repossessed and sold in the event the borrower defaults—a practice known as asset-based lending.[193] The largest vehicle title lender stated in 2011 that its underwriting decisions were based entirely on the wholesale value of the vehicle.[194] Other title lenders' Web sites state that proof of income is required,[195] although it is unclear whether employment information is verified or used for underwriting, whether it is used for collections and communication purposes upon default, or for both purposes. The Bureau is aware, from confidential information gathered in the course of its statutory functions, that one or more vehicle title lenders regularly exceed their maximum loan amount guidelines and instruct employees to consider a vehicle's sentimental or use value to the borrower when assessing the amount of funds they will lend.

One large title lender stated that it competes on factors such as location, customer service, and convenience, and also highlights its pricing as a competitive factor.[196] An academic study found evidence of price competition in the vehicle title market, citing the abundance of price-related advertising and evidence that in States with rate caps, such as Tennessee, approximately half of the lenders charged the maximum rate allowed by law, with the other half charging lower rates.[197] However, another report found that like payday lenders, title lenders compete primarily on location, speed, and customer service, gaining customers by increasing the number of locations rather than decreasing their prices.[198]

Loan amounts are typically for less than half the wholesale value of the consumer's vehicle. Low loan-to-value ratios reduce lenders' risk. A survey of title lenders in New Mexico found that the lenders typically lend between 25 and 40 percent of a vehicle's wholesale value.[199] At one large title lender, the weighted average loan-to-value ratio was found to be 26 percent of Black Book retail value.[200] The same lender has two principal operating divisions; one division requires that vehicles have a minimum appraised value greater than $500, but the lender will lend against vehicles with a lower appraised value through another brand.[201]

When a borrower defaults on a vehicle title loan, the lender may repossess the vehicle. The Bureau believes, based on market outreach, that the decision whether to repossess a vehicle will depend on factors such as the amount due, the age and resale value of the vehicle, the costs to locate and repossess the vehicle, and State law requirements to refund any surplus amount remaining after the sale proceeds have been applied to the remaining loan balance.[202] Available information indicates that lenders are unlikely to repossess vehicles they do not expect to sell. The largest vehicle title lender sold 83 percent of the vehicles it repossessed but did not report overall repossession rates.[203] In 2012, its firm-wide gross charge-offs equaled 30 percent of its average outstanding title loan balances.[204] The Bureau is aware of vehicle title lenders engaging in illegal debt collection activities in order to collect amounts claimed to be due under title loan agreements. These practices include altering caller ID information on outgoing calls to borrowers to make it appear that calls were from other businesses, falsely threatening to refer borrowers for criminal investigation or prosecution, and unlawful disclosures of debt information to borrowers' employers, friends, and family.[205] In addition, approximately 20 percent of consumer complaints handled by the Bureau about vehicle title loans involved consumers reporting concerns about repossession issues.[206]

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[188] TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 4, 21.

[189] *See, e.g., https://www.cash1titleloans.com/apply-now/arizona.aspx?st-t=cash1titleloans_srch&gclid=Cj0KEQjwoM63BRDK_bf4_MeV3ZEBEiQAuQWqkU6O5gtz6kRjP8T3Al-BvylI-bIKksDT-r0NMPjEG4kaAqZe8P8HAQ; https://www.speedycash.com/title-loans/; http://metroloans.com/title-loans-faqs/; http://info.lendingbear.com/blog/need-money-now-2-short-term-solutions-for-your-cash-flow-problem ; http://fastcashvirginia.com/* (all sites last visited March 24, 2016).

[190] *Arizona Title Loans,* Check Smart, *http://www.checksmartstores.com/arizona/title-loans/* (last visited Jan. 14, 2016); Fred Schulte, Public Integrity, *Lawmakers protect title loan firms while borrowers pay sky-high interest rates* (Dec. 9, 2015), *http://www.publicintegrity.org/2015/12/09/18916/lawmakers-protect-title-loan-firms-while-borrowers-pay-sky-high-interest-rates.*

[191] Ctr. for Responsible Lending, *Car Title Lending: Disregard for Borrowers' Ability to Repay,* at 1 (2014), *available at http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/Car-Title-Policy-Brief-Abilty-to-Repay-May-12-2014.pdf*

[192] *Special Offers,* Check Smart, *http://www.checksmartstores.com/arizona/special-offers/* (last visited Mar. 29, 2016).

[193] Advance America's Web site states "[l]oan amount will be based on the value of your car* (*requirements may vary by state)." *Title Loans,* Advance America, *https://www.advanceamerica.net/services/title-loans* (last visited Mar. 3, 2016); Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 1; Fred Schulte, Public Integrity, *Lawmakers protect title loan firms while borrowers pay sky-high interest rates* (Dec. 9, 2015), *http://www.publicintegrity.org/2015/12/09/18916/lawmakers-protect-title-loan-firms-while-borrowers-pay-sky-high-interest-rates.*

[194] TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 5.

[195] *See, e.g., https://checkintocash.com/title-loans/* (last visited March 3, 2016); *https://www.speedycash.com/title-loans/* (last visited March 3, 2016); *https://www.acecashexpress.com/title-loans* (last visited March 3, 2016); *http://fastcashvirginia.com/faq/* (last visited March 3, 2016).

[196] TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 6.

[197] Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending,* 69 Wash. & Lee L. Rev. 535, 558-559 (2012).

[198] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 5.

[199] Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending,* 77 Mo. L. Rev. 41 (2012).

[200] TMX Fin. LLC, 2011 Annual Report (Form 10-K), at 3 (Mar. 19, 2012), *available at https://www.sec.gov/Archives/edgar/data/1511967/000119312512121419/d315506d10k.htm.*

[201] *Id.* at 5.

[202] *See also* Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 13.

[203] Missouri sales of repossessed vehicles calculated from data linked to Walter Moskop, St. Louis Post-Dispatch, *Title Max is thriving in Missouri—and repossessing thousands of cars in the process* (Sept. 21, 2015), *http://www.stltoday.com/business/local/titlemax-is-thriving-in-missouri-and-repossessing-thousands-of-cars/article_d8ea72b3-f687-5be4-8172-9d537ac94123.html.*

[204] Bureau estimates based on publicly available financial statements by TMX Fin. LLC, 2012 Annual Report (Form 10-K), at 22, 43.

[205] Bureau of Consumer Fin. Prot., *CFPB Orders Relief for Illegal Debt Collection Tactics.*

Some vehicle title lenders have installed electronic devices on the vehicles, known as starter interrupt devices, automated collection technology, or more colloquially as "kill switches," that can be programmed to transmit audible sounds in the vehicle before or at the payment due date. The devices may also be programmed to prevent the vehicle from starting when the borrower is in default on the loan, although they may allow a one-time re-start upon the borrower's call to obtain a code.[207] One of the starter interrupt providers states that "[a]ssuming proper installation, the device will *not* shut off the vehicle while driving."[208] Due to concerns about consumer harm, one State financial regulator prohibited the devices as an unfair collection practice in all consumer financial transactions,[209] and a State attorney general issued a consumer alert about the use of starter interrupt devices specific to vehicle title loans.[210] The alert also noted that some title lenders require consumers to provide an extra key to their vehicles. In an attempt to avoid illegal repossessions, Wisconsin's vehicle title law prohibits lenders from requiring borrowers to provide the lender with an extra key to the vehicle.[211] The Bureau has received several complaints about starter interrupt devices.

Business model. As noted above, short-term vehicle title lenders appear to have overhead costs relatively similar to those of storefront payday lenders. Vehicle title lenders' loss rates and reliance on reborrowing activity appear to be even greater than that of storefront payday lenders.

Based on data analyzed by the Bureau, the default rate on single-payment vehicle title loans is six percent and the sequence-level default rate is 33 percent, compared with a 20 percent sequence-level default rate for storefront payday loans. One-in-five single-payment vehicle title loan borrowers has their vehicle repossessed by the lender.[212]

Similarly, the rate of vehicle title reborrowing appears high. In the Bureau's data analysis, more than half, 56 percent, of single-payment vehicle title loan sequences stretched for at least four loans; over a third, 36 percent, were seven or more loans; and 23 percent of loan sequences consisted of ten or more loans. While other sources on vehicle title lending are more limited than for payday lending, the Tennessee Department of Financial Institutions publishes a biennial report on vehicle title lending. Like the single-payment vehicle title loans the Bureau has analyzed, the vehicle title loans in Tennessee are 30-day single-payment loans. The most recent report shows similar patterns to those the Bureau found in its research, with a substantial number of consumers rolling over their loans multiple times. According to the report, of the total number of loan agreements made in 2014, about 15 percent were paid in full after 30 days without rolling over. Of those loans that are rolled over, about 65 percent were at least in their fourth rollover, about 44 percent were at least in their seventh rollover, and about 29 percent were at least in their tenth, up to a maximum of 22 rollovers.[213]

The impact of these outcomes for consumers who are unable to repay and either default or reborrow is discussed in Market Concerns—Short-Term Loans.

Bank Deposit Advance Products and Other Short-Term Lending

As noted above, within the banking system, consumers with liquidity needs rely primarily on credit cards and overdraft services. Some institutions have experimented with short-term payday-like products or partnering with payday lenders, but such experiments have had mixed results and in several cases have prompted prudential regulators to take action discouraging certain types of activity.

In 2000, the Office of the Comptroller of the Currency (OCC) issued an advisory letter alerting national banks that the OCC had significant safety and soundness, compliance, and consumer protection concerns with banks entering into contractual arrangements with vendors seeking to avoid certain State lending and consumer protection laws. The OCC noted it had learned of nonbank vendors approaching federally chartered banks urging them to enter into agreements to fund payday and title loans. The OCC also expressed concern about unlimited renewals (what the Bureau refers to as reborrowing), and multiple renewals without principal reduction.[214] The agency subsequently took enforcement actions against two national banks for activities relating to payday lending partnerships.[215]

The Federal Deposit Insurance Corporation (FDIC) has also expressed concerns with similar agreements between payday lenders and the depositories under its purview. In 2003, the FDIC issued Guidelines for Payday Lending applicable to State-chartered FDIC-insured banks and savings associations; the guidelines were revised in 2005 and most recently in 2015. The guidelines focus on third-party relationships between the chartered institutions and other parties, and specifically address rollover limitations. They also indicate that banks should ensure borrowers exhibit both a willingness and ability to repay when rolling over a loan. Among other things, the guidelines indicate that institutions should: (1) ensure that payday loans are not provided to customers who had payday loans outstanding at any lender for a total of three months during the previous 12 months; (2) establish appropriate cooling-off periods between loans; and (3) provide that no more than one payday loan is outstanding with the bank at a time to any one borrower.[216] In 2007, the FDIC issued guidelines encouraging banks to offer affordable small-dollar loan alternatives with APRs of 36 percent or less, reasonable and limited fees, amortizing payments, underwriting focused on a borrower's ability to repay but allowing flexible documentation, and to avoid excessive renewals.[217]

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[206] This represents complaints received between November 2013 and December 2015.

[207] *See, e.g.,* Eric L. Johnson & Corinne Kirkendall, *Starter Interrupt and GPS Devices: Best Practices,* PassTime GPS (Jan. 14, 2016), *http://www.passtimegps.com/index.php/2016/01/14/starter-interrupt-and-gps-devices-best-practices/.* These products may be used in conjunction with GPS devices and are also marketed for subprime automobile financing and insurance.

[208] *Id.*

[209] Paul Egide, Wisconsin Dep't of Fin. Instits., *Starter Interrupter Devices,* (Jan. 18, 2012), *available at https://www.wdfi.org/_resources/indexed/site/wca/StarterInterrupterDevices.pdf.*

[210] The alert also noted that vehicle title loans are illegal in Michigan. Michigan Attorney General Bill Schuette, *Auto Title Loans Consumer Alert, http://www.michigan.gov/ag/0,4534,7-164-17337-371738--,00.html* (last visited Jan. 13, 2016).

[211] Wis. Stat. § 138.16(4)(b).

[212] *CFPB Single-Payment Vehicle Title Lending,* at 23, and *CFPB Report on Supplemental Findings,* at ch. 5.

[213] Tennessee Dep't of Fin. Institutions, *2016 Report on the Title Pledge Industry,* at 8. In comparison, rollovers are prohibited on payday loans in Tennessee, *see* Tenn. Code Ann. § 45-17-112(q).

[214] Office of the Comptroller of the Currency, Advisory Letter AL 2000-10, *Payday Lending* (Nov. 27, 2000), *available at http://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-10.pdf.*

[215] See OCC consent orders involving Peoples National Bank and First National Bank in Brookings. Press Release, OCC, NR 2003-06, *Peoples National Bank to Pay $175,000 Civil Money Penalty And End Payday Lending Relationship with Advance America* (Jan. 31, 2003), *http://www.occ.gov/static/news-issuances/news-releases/2003/nr-occ-2003-6.pdf*; First National Bank in Brookings, OCC Consent Order No. 2003-1 (Jan. 17, 2003), available at *http://www.occ.gov/static/enforcement-actions/ea2003-1.pdf.*

[216] FDIC Financial Institution Letters, *Guidelines for Payday Lending,* Fed. Deposit Ins. Corp. (Revised Nov. 2015), *https://www.fdic.gov/news/news/financial/2005/fil1405a.html.*

The NCUA has taken some steps to encourage federally chartered credit unions to offer ''payday alternative loans,'' which generally have a longer term than traditional payday products. This program is discussed in more detail in part II.C.

As the payday lending industry grew, a handful of banks decided to offer their deposit customers a similar product termed a deposit advance product (DAP). While one bank started offering deposit advances in the mid-1990s, the product began to spread more rapidly in the late 2000s and early 2010s. DAP could be structured a number of ways but generally involved a line of credit offered by depository institutions as a feature of an existing consumer deposit account with repayment automatically deducted from the consumer's next qualifying deposit. Deposit advance products were available to consumers who received recurring electronic deposits if they had an account in good standing and, for some banks, several months of account tenure, such as six months. When an advance was requested, funds were deposited into the consumer's account. Advances were automatically repaid when the next qualifying electronic deposit, whether recurring or one-time, was made to the consumer's account rather than on a fixed repayment date. If an outstanding advance was not fully repaid by an incoming electronic deposit within about 35 days, the consumer's account was debited for the amount due and could result in a negative balance on the account.

The Bureau estimates that at the product's peak from mid-2013 to mid-2014, banks originated roughly $6.5 billion of advances, which represents about 22 percent of the volume of storefront payday loans issued in 2013. The Bureau estimates that at least 1.5 million unique borrowers took out one or more DAP loans during that same time period.[218]

DAP fees, like payday loan fees, did not vary with the amount of time that the advance was outstanding but rather were set as dollars per amount advanced. A typical fee was $2 per $20 borrowed, the equivalent of $10 per $100. Research undertaken by the Bureau using a supervisory dataset found that the median duration for a DAP advance was 12 days, yielding an effective APR of 304 percent.[219]

The Bureau further found that while the average draw on a DAP was $180, users typically took more than one draw before the advance was repaid. The multiple draws resulted in a median average daily DAP balance of $343, which is similar to the size of a typical payday loan. With the typical DAP fee of $2 per $20 advanced, the fees for $343 in advances equate to about $34.30. The median DAP user was indebted for 112 days over the course of a year and took advances in seven months. Fourteen percent of borrowers took advances totaling over $9,000 over the course of the year; these borrowers had a median number of days in debt of 254.[220]

In 2010, the Office of Thrift Supervision (OTS) issued a supervisory directive ordering one bank to terminate its DAP program, which the bank offered in connection with prepaid accounts, after determining the bank engaged in unfair or deceptive acts or practices and violated the OTS' Advertising Regulation.[221] Consequently, in 2011, pursuant to a cease and desist order, the bank agreed to remunerate its DAP consumers nearly $5 million and pay a civil monetary penalty of $400,000.[222]

In November 2013, the FDIC and OCC issued final supervisory guidance on DAP.[223] This guidance stated that banks offering DAP should adjust their programs in a number of ways, including applying more scrutiny in underwriting DAP loans and discouraging repetitive borrowing. Specifically, the OCC and FDIC stated that banks should ensure that the customer relationship is of sufficient duration to provide the bank with adequate information regarding the customer's recurring deposits and expenses, and that the agencies would consider sufficient duration to be no less than six months. In addition, the guidance said that banks should conduct a more stringent financial capacity assessment of a consumer's ability to repay the DAP advance according to its terms without repeated reborrowing, while meeting typical recurring and other necessary expenses as well as outstanding debt obligations. In particular, the guidance stated that banks should analyze a consumer's account for recurring inflows and outflows at the end, at least, of each of the preceding six months before determining the appropriateness of a DAP advance. Additionally, the guidance noted that in order to avoid reborrowing, a cooling-off period of at least one monthly statement cycle after the repayment of a DAP advance should be completed before another advance could be extended. Finally, the guidance stated that banks should not increase DAP limits automatically and without a fully underwritten reassessment of a consumer's ability to repay, and banks should reevaluate a consumer's eligibility and capacity for DAP at least every six months.[224]

Following the issuance of the FDIC and OCC guidance, banks supervised by the FDIC and OCC ceased offering DAP. Of two DAP-issuing banks supervised by the Board of Governors of the Federal Reserve System (Federal Reserve Board) and therefore not subject to either the FDIC or OCC guidance, one eliminated its DAP program while another continues to offer a modified version of DAP to its existing DAP borrowers.[225] Today, with the exception of some short-term lending within the NCUA's Payday Alternative Loan program, described below in part II.C, relatively few banks or credit unions offer large-scale formal loan programs of this type.

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[217] *Financial Institution Letters, Affordable Small-Dollar Loan Products, Final Guidelines FIL 50-2007* (June 19, 2007), *https://www.fdic.gov/news/news/financial/2007/fil07050.html.*

[218] CFPB staff analysis based on confidential information gathered in the course of statutory functions. Estimates made by summing aggregated data across a number of DAP-issuing institutions. For payday industry size, see, John Hecht, *Alternative Financial Services*, at 7.

[219] *CFPB Payday Loans and Deposit Advance Products White Paper*, at 27-28.

[220] *Id.* at 33 fig. 11, 37 fig. 14.

[221] Meta Fin. Grp., Inc., 2010 Annual Report (Form 10-K), at 59 (Dec. 13, 2010) (FY 2010), *available at https://www.sec.gov/Archives/edgar/data/907471/000110465910062243/a10-22477_110k.htm.*

[222] Meta Fin. Grp., Inc., Quarter Report (Form 10-Q) at 31 (Aug. 5, 2011), *available at https://www.sec.gov/Archives/edgar/data/907471/000114036111039958/form10q.htm.* The OTS was merged with the OCC effective July 21, 2011. *See OTS Integration*, OCC, *http://www.occ.treas.gov/about/who-we-are/occ-for-you/bankers/ots-integration.html* (last visited Apr. 27, 2016).

[223] OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 26, 2013), *available at http://www.occ.treas.gov/news-issuances/federal-register/78fr70624.pdf;* Fed. Deposit Ins. Corp. Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013), *available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28306.pdf.*

[224] Office of the Comptroller of the Currency Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, **Federal Register**, 78 FR 70624 (Nov. 26, 2013), *available at http://www.occ.treas.gov/news-issuances/federal-register/78fr70624.pdf;* Fed. Deposit Ins. Corp. Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552, 70556-70557 (Nov. 26, 2013), *available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28306.pdf.*

[225] *Products and Services*, Fifth Third Bank, *https://www.53.com/site/personal-banking/account-management-services/early-access.html* (last visited Apr. 27, 2016). The Federal Reserve issued a statement to its member banks on DAP, *''Statement on Deposit Advance Products,''* (Apr. 25, 2013), *available at http://www.federalreserve.gov/bankinforeg/caletters/CALetter13-07.pdf.*

C. Longer-Term, High-Cost Loans

As discussed above, beginning in the 1990s, a number of States created carve-outs from their usury laws to permit single-payment payday loans at annualized rates of between 300 percent and 400 percent. Although this lending initially focused primarily on loans lasting for a single income cycle, lenders have introduced newer, longer forms of liquidity loans over time. These longer loan forms include the "hybrid payday loans" discussed above, which are high-cost loans where the consumer is automatically scheduled to make a number of interest or fee only payments followed by a balloon payment of the entire amount of the principal and any remaining fees. They also include "payday installment loans," described in more detail below. In addition, as discussed above, a number of States have authorized longer term vehicle title loans that extend beyond 30 days. Some longer-term, high cost installment loans likely were developed in response to the Department of Defense's 2007 rules implementing the Military Lending Act. As discussed above in part II.B, those rules applied to payday loans of 91 days or less (with an amount financed of $2,000 or less) and to vehicle title loans of 180 days of less. The Department of Defense recently expanded the scope of the rules due to its belief that creditors were structuring products to avoid the MLA's application.[226]

Payday Installment Loans

Product definition and regulatory environment. The term "payday installment loan" refers to a high-cost loan repaid in multiple installments, with each installment typically due at the consumer's payday and with the lender generally having the ability to collect the payment from the consumer's bank account as money is deposited or directly from the consumer's paycheck.[227]

Two States, Colorado and Illinois, have authorized payday installment loans. A number of other States have adopted usury laws that payday lenders use to offer payday installment loans in addition to more traditional payday loans. For example, a recent report found that eight States have no rate or fee limits for closed-end loans of $500 and that 11 States have no rate or fee limits for closed-end loans of $2,000.[228] The same report noted that for open-end credit, 14 States do not limit rates for a $500 advance and 16 States do limit them for a $2,000 advance.[229] Another recent study of the Web sites of five payday lenders, that operate both online and at storefront locations, found that these five lenders offered payday installment loans in at least 17 States.[230]

In addition, as discussed above, a substantial segment of the online payday industry operates outside of the constraints of State law, and this segment, too, has migrated towards payday installment loans. For example, a study commissioned by a trade association for online lenders surveyed seven lenders and concluded that, while single-payment loans are still a significant portion of these lenders' volume, they are on the decline while installment loans are growing. Several of the lenders represented in the report had either eliminated single-payment products or were migrating to installment products while still offering single-payment loans.[231]

There is less public information available about payday installment loans than about single-payment payday loans. Publicly traded payday lenders that make both single-payment and installment loans often report all loans in aggregate and do not report separately on their installment loan products or do not separate their domestic installment loan products from their international installment loan product lines, making sizing the market difficult. However, one analyst suggests that the continuing trend is for installment loans to take market share—both volume and revenue—away from single-payment payday loans.[232]

More specifically, data on payday installment lending is available, however, from the two States that expressly authorize it. Through 2010 amendments to its payday loan law, Colorado no longer permits short-term single-payment payday loans. Instead, in order to charge fees in excess of the 36 percent APR cap for most other consumer loans, the minimum loan term must be six months.[233] The maximum payday loan amount remains capped at $500, and lenders are permitted to take a series of post-dated checks or payment authorizations to cover each payment under the loan, providing lenders with the same access to borrower's accounts as a single-payment payday loan. The average payday installment loan amount borrowed in Colorado in 2014 was $392 and the average contractual loan term was 189 days. The average APR on these payday installment loans was 190 percent, which reflects the fact that at the same time that Colorado mandated minimum six-month terms it also imposed a new set of pricing restrictions on these loans.[234] Borrowers may prepay without a penalty and receive a pro-rata refund of all fees paid. According to loan data from Colorado, the average actual loan term was 94 days, resulting in an effective APR of 121 percent.[235]

In Illinois, lenders have been permitted to make payday installment loans since 2011 for terms of 112 to 180 days and amounts up to the lesser of $1,000 or 22.5 percent of gross monthly income.[236] A consumer may take out two loans concurrently (single-payment payday, payday installment, or a combination thereof) so long as the total amount borrowed does not exceed the cap. The maximum permitted charge on Illinois payday installment loans is $15.50 per $100 on the initial principal balance and on the balance scheduled to be outstanding at each installment period. For 2013, the average payday installment loan amount was $634 to be repaid in 163 days along with total fees of $645. The average APR on Illinois payday installment loans was 228 percent.[237]

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[226] 80 FR 43560, 43567 n.78 (July 22, 2015).

[227] Lenders described in part II.C as payday installment lenders may not use this terminology.

[228] Nat'l. Consumer Law Ctr., *Installment Loans, Will States Protect Borrowers From A New Wave Of Predatory Lending?*, at v-vi (2015), *available at http://www.nclc.org/images/pdf/pr-reports/report-installment-loans.pdf.* Roughly half of the States with no set limits do prohibit unconscionable interest rates.

[229] *Id.*, at vi.

[230] Diane Standaert, Ctr. for Responsible Lending, *Payday and Car Title Lenders' Migration to Unsafe Installment Loans*, at 7 tbl.1 (2015), *available at http://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/crl_brief_cartitle_lenders_migrate_to_installmentloans.pdf.* CRL surveyed the Web sites for: Cash America, Enova International (dba CashNetUSA and dba NetCredit), Axcess Financial (dba Check 'N Go), and ACE Cash Express (*see* Standaert at 10 n.52).

[231] Michael Flores, Bretton-Woods, Inc., *The State of Online Short-Term Lending, Second Annual Statistical Analysis Report* at 4, *available at http://onlinelendersalliance.org/wp-content/uploads/2015/07/2015-Bretton-Woods-Online-Lending-Study-FINAL.pdf.* The report does not address the State licensing status of the study participants but based on its market outreach activities, the Bureau believes that some of the loans included in the study were not made subject to the licensing laws of the borrowers' States of residence. *See also* nonPrime101, *Report 1,* at 9, 11.

[232] Hecht, *Alternative Financial Services,* at 9.

[233] Colo. Rev. Stat. § 5-3.1-103. Although loans may be structured in multiple installments of substantially equal payments or a single installment, almost all lenders contract for repayment in monthly or bi-weekly installments. 4 Colo. Code Regs. § 902-1, Rule 17(B)1, *available at http://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=3842*; Adm'r of the Colo. Unif. Consumer Credit Code, *Colorado Payday Lending July 2000 Through December 2012,* at 15-16.

[234] The 2010 amendments also established a complex pricing formula with an origination fee averaging $15 per $100 borrowed, a maximum 45 percent interest rate, and up to $30 per month as a maintenance fee after the first month. Colo. Rev. Stat. § 5-3.1-105.

[235] State of Colo. Dep't of Law, *2014 Deferred Deposit/Payday Lenders Annual Report,* at 2, *available at http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/2014_ddl_ar_composite.pdf.*

[236] 815 Ill. Comp. Stat. 122/2-5.

In Illinois, payday installment loans have grown rapidly. In 2013, the volume of payday installment loans made was 113 percent of the 2011 volume. From 2010 to 2013, however, the volume of single-payment payday loans decreased by 21 percent.[238]

Beyond the data from these two States, several studies shed additional light on payday installment lending. A research paper based on a dataset from several payday installment lenders, consisting of over 1.02 million loans made between January 2012 and September 2013, provides some information on payday installment loans.[239] It contains data from both storefront installment loans (55 percent) and online installment loans (45 percent). It found that the median loan amount borrowed was $900 for six months (181 days) with 12 bi-weekly installment payments coinciding with paydays. The median APR on these loans was 295 percent. Online borrowers had higher median gross incomes than storefront borrowers ($39,000 compared to $31,000). When the researchers included additional loans they described as being made under "alternative business models, such as loans extended under tribal jurisdiction," the median loan amount borrowed was $800 for 187 days due in 12 installments at a higher median APR of 319 percent.[240]

Similarly, a report using data from a specialty consumer reporting agency that included data primarily from online payday lenders that claim exemption from State lending laws examined the pricing and structure of their installment loans.[241] From 2010 to 2014, loans that may be described as payday installment loans generally accounted for one-third of all loans in the sample; however, this fluctuated by quarter between approximately 10 and 50 percent.[242] The payday installment loans had a median APR of 335 percent, across all payment structures. The most common payday installment loan in the sample had 12 bi-weekly payments; a median size of $500 and a median APR of 348 percent.

A third study commissioned by an online lender trade association surveyed a number of online lenders. The survey found that the average payday installment loan was for $667 with an average term of five months. The average fees for these loans were $690. The survey did not provide any APRs but the Bureau estimates that the average APR for a loan with these terms (and bi-weekly payments, the most common payment frequency seen) is about 373 percent.[243]

In a few States, such as Virginia discussed above in part II.B, and Kansas,[244] lenders offer loans structured as open-end payday installment loans. The Bureau believes based on market outreach, that lenders utilize open-end credit structures where they view State licensing or lending provisions as more favorable for open-end products. Some open-end products are for similar loan amounts as single-payment payday loans, cash advances are restricted to set increments such as $50 and must be requested in person, by calling the lender, or visiting the lender's Web site, and payments under the open-end line of credit are due on the borrower's scheduled paydays.

Marketing and underwriting practices. The Bureau believes based on market outreach, that some lenders use similar underwriting practices for both single-payment and payday installment loans (borrower identification, and information about income and a bank account) so long as they have access to the borrower's bank account for repayment. Some payday installment lenders, particularly but not exclusively online lenders, may use underwriting technology that pulls data from nationwide consumer reporting agencies and commercial or proprietary credit scoring models based on alternative data to assess fraud and credit risk.[245] In 2014, net charge-offs at two of the large licensed online installment lenders were over 50 percent of average balances.[246]

The Bureau likewise believes that the customer acquisition costs for online payday installment loans are likely similar to the costs to acquire a customer for an online single-payment payday loan. For example, one large licensed online payday installment lender reported that its 2014 customer acquisition cost per new loan was $297.[247] Another large online lender with both single-payment and payday installment loans reported that its marketing expense is 15.8 percent of revenue in 2014.[248]

Business model. In many respects, payday installment loans are similar to single-payment payday loans. However, one obvious difference is that the loan agreements provide for repayment in installments, rather than single-payment loans that may be rolled over or hybrid loans that automatically rollover, described above in part II.B above.

Regulatory reports from Colorado and Illinois provide evidence of repeat borrowing on payday installment loans. In Colorado, in 2012, two years after the State's amendments to its payday lending law, 36.7 percent of new loans were taken out on the same day that a previous loan was paid off, an increase from the prior year; for larger loans, nearly 50 percent were taken out on the same day that a previous loan was repaid.[249] Further, despite a statutorily-required minimum loan term of six months, on average, consumers took out 2.9 loans from the same lender during 2012 (by prepaying before the end of the loan term and then reborrowing).[250] Colorado's regulatory reports demonstrate that in 2013, the number of loan defaults on payday installment loans, calculated as a percent of the total number of borrowers, was 38 percent but increased in 2014 to 44 percent.[251]

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[237] Ill. Dep't. of Fin. & Prof. Reg., *Illinois Trends Report Through December 2013,* at 4-8, 22-25.

[238] *Id.*, at 20.

[239] Howard Beales & Anand Goel, *Small Dollar Installment Loans: An Empirical Analysis,* at 9 (2015), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581667.*

[240] *Id.*, at 11, 14, 15.

[241] nonPrime 101, *Report 5: Loan Product Structures and Pricing in Internet Installment Lending.*

[242] The other loan types in the sample were hybrid payday loans (described above in part II.B), which made up approximately one-third of the loans, traditional single-payment payday loans, also one-third of the loans, and non-amortizing payday installment loans, which made up a negligible percentage of loans in the dataset. *Id.* at 7.

[243] Flores, *State of Online Short-Term Lending, Second Annual Statistical Analysis,* at 3-4.

[244] *See, e.g.,* QC Holdings, Inc., 2015 Annual Report (Form 10-K), at 9.

[245] For example, use of risk assessment and national databases. *Payday Loans/Cash Advance,* Advance America, *https://www.advanceamerica.net/locations/details/store-4500/2828-S-17th-Ave-Unit-B/Broadview/IL/60155* (last visited March 10, 2016). For example, obtain credit report from a national consumer reporting agency. Check'nGo, *http://checkngoloans.com/default* (last visited March 10, 2016).

[246] Bureau staff calculation of ratio of net charged off loans (gross charge-offs less recoveries) to average loan balances (average of beginning and end of year receivables) of the same loan type based on Forms 10-K (Enova) and S-1 (Elevate) public documents. Elevate's public documents do not separate domestic from international operations, or installment loans from lines of credit. Enova does not separate domestic from international operations in its public documents. Elevate Credit Inc., Registration Statement (Form S-1), at 12 (Nov. 9, 2015), *available* at *https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm.* This figure includes costs for lines of credit as well and also includes costs for its business in the United Kingdom. Enova Int'l Inc., 2014 Annual Report (Form, 10-K), at 49, 95 (Mar. 20, 2015), *available at https://www.sec.gov/Archives/edgar/data/1529864/000156459015001871/enva-10k_20141231.htm.* This figure includes both domestic and international short-term loans.

[247] Elevate Credit Inc., Registration Statement (Form S-1), at 12 (Nov. 9, 2015), *available at https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm.* This figure includes costs for lines of credit as well and also includes costs for its business in the United Kingdom.

[248] Enova Int'l Inc., 2015 Annual Report (Form, 10-K), at 50 (Mar. 7, 2016), *available at https://www.sec.gov/Archives/edgar/data/1529864/000156459016014129/enva-10k_20151231.htm.*

One feature of Illinois' database is that it tracks applications declined due to ineligibility. In 2013, of those payday installment loan applications declined, 54 percent were declined because the applicants would have exceeded the permissible six months of consecutive days in debt and 29 percent were declined as they would have violated the prohibition on more than two concurrently open loans.[252]

In a study of high-cost unsecured installment loans, the Bureau has found that 37 percent of these loans are refinanced. For a subset of loans made at storefront locations, 94 percent of refinances involved cash out (meaning the consumer received cash from the loan refinance); for a subset of loans made online, nearly 100 percent of refinanced loans involved cash out. At the loan level, for unsecured installment loans in general, 24 percent resulted in default; for those made at storefront locations, 17 percent defaulted, compared to a 41 percent default rate for online loans.[253]

A report based on data from several payday installment lenders was generally consistent. It found that nearly 34 percent of these payday installment loans ended in charge-off. Charge-offs were more common for loans in the sample that had been made online (42 percent) compared to those made at storefront locations (27 percent).[254]

Installment Vehicle Title Loans

Product definition and regulatory environment. Installment vehicle title loans are vehicle title loans that are contracted to be repaid in multiple installments rather than in a single payment. Operationally, they are similar to single-payment vehicle title loans that are rolled over and discussed above in part II.B. As discussed in that section, about half of the States authorizing vehicle title loans permit the loans to be repaid in installments rather than, or in addition to, a single lump sum.[255]

As with single-payment vehicle title loans, the State laws applicable to installment vehicle title loans vary. Illinois requires vehicle title loans to be repaid in equal installments, limits the maximum loan amount to the lesser of $4,000 or 50 percent of the borrower's monthly income, has a 15-day cooling-off period except for refinances (defined as extensions or renewals) but does not limit fees. A refinance may be made only when the original principal of the loan is reduced by at least 20 percent.[256] Texas limits the loan term for CSO-arranged title loans to 180 days but does not cap fees.[257] Virginia has both a minimum loan term (120 days) and a maximum loan term (12 months) and caps fees at between 15 to 22 percent of the loan amount per month.[258] It also prohibits rollovers. Wisconsin limits the original loan term to six months but does not limit fees other than default charges, which are limited to 2.75 percent per month; it caps the maximum loan amount at $25,000.[259] Rollovers are not permitted on Wisconsin installment loans.

Some States do not specify loan terms for vehicle title loans, thereby authorizing both single-payment and installment title loans. These States include Arizona, New Mexico, and Utah. Arizona limits fees to between 10 and 17 percent per month depending on the loan amount; fees do not vary by loan duration.[260] New Mexico and Utah do not limit fees for vehicle title loans, regardless of the loan term.[261] Delaware has no limit on fees but limits the term to 180 days, including rollovers, likewise authorizing either 30-day loans or installment loans.[262]

State regulator data from two States track loan amounts, APRs, and loan terms for installment vehicle title loans. Illinois reported that in 2013, the average installment vehicle title loan amount was over $950 to be repaid in 442.7 days along with total fees of $2,316.43, and the average APR was 201 percent.[263] Virginia data show similar results. In 2014, the average amount borrowed on vehicle title loans was $1,048. The average APR was 222 percent and the average loan term was 345 days.[264] For a $1,048 loan, a Virginia title lender could charge interest of about $216.64 per month, or $2,491.36 for 345 days.[265] The average installment vehicle title loan amounts borrowed are similar to the amounts borrowed in single-payment title loan transactions; the average APRs are generally lower due to the longer loan term, described above in part II.B.

The Bureau obtained anonymized multi-year data from seven lenders offering either or both vehicle title and payday installment loans. The vehicle title installment loan data are from 2010 through 2013; the payday installment data are from 2007 through 2014. The Bureau reported that the average vehicle title installment loan amount was $1,098 and the median loan amount was $710; the average was 14 percent higher, and the median was two percent higher, than for single-payment vehicle title loans. The average APR was 250 percent and the median 259 percent compared to 291 percent and 317 percent for single-payment vehicle title loans.

Industry size and structure. The three largest vehicle title lenders, as defined by store count and described above in part II.B, make both single-payment and installment vehicle title loans, depending on the requirements and authority of State laws. As discussed above, there are no publicly traded vehicle title lenders (though some of the publicly-traded payday lenders also make vehicle title loans) and the one formerly public company did not distinguish its single-payment title loans from its installment title loans in its financial reports. Consequently, estimates of vehicle title loan market size include both single-payment and installment vehicle title loans, including the estimates provided above in part II.B, above.

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[249] *Colorado UCCC 2000-2012 Demographic and Statistical Information*, at 25.

[250] *Id.* at 15, 18.

[251] State of Colo. Dep't of Law, *2014 Deferred Deposit/Payday Lenders Annual Report; http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/2014_ddl_ar_composite.pdf*; The Pew Charitable Trusts, *Trial, Error, and Success in Colorado's Payday Lending Reforms*, at 6 (2014), *available at http://www.pewtrusts.org/~/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf*.

[252] Ill. Dep't. of Fin. & Prof. Reg., *Illinois Trends 2013 Report*, at 24.

[253] *CFPB Report on Supplemental Findings*, at ch. 1.

[254] Beales & Goel, at 24-25. These figures refer to data from the authors' main sample, which excludes loans made under "alternative business models, such as loans extended under tribal jurisdiction."

[255] Pew, *Auto Title Loans: Market Practices and Borrowers' Experience*, at 4.

[256] Ill. Admin. Code, tit. 38, § 110.370.

[257] Tex. Fin. Code Ann. § 393.221 to 393.224.

[258] VA. Code §§ 6.2-2215, 6.2.2216. As noted above in part II.B, Virginia has no interest rate regulations or licensure requirements for open-end credit.

[259] Wis. Stat. § 138.16(2)(b)(2).

[260] Ariz. Rev. Stat § 44-281 and § 44-291.

[261] N.M. Stat. §§ 58-15-1 to 30; Utah Code § 7-24-101 through 305.

[262] Del. Code ANN. tit. 5, §§ 2250, 2254.

[263] Ill. Dep't. of Fin. & Prof. Reg., *Illinois Trends Report Through December 2013*, at 28.

[264] Va. State Corp. Comm'n, *The 2014 Annual Report*, at 71.

[265] A licensed vehicle title lender may charge 22 percent per month on the principal up to $700, 18 percent per month on amounts over $700 to $1,400, and 15 percent per month on amount that exceed $1,400. VA Code § 6.2-2216.

Marketing and underwriting practices. In most respects, installment vehicle title loans are similar to single-payment vehicle title loans in marketing, borrower demographics, underwriting, and collections. For example, the Bureau is aware from market outreach and market monitoring activities that some installment vehicle title lenders require proof of income as part of the application process for installment vehicle title loans,[266] while others do not. Some installment vehicle title loans are set up to include repayment by ACH from the borrower's account, a practice common to payday installment loans. The Bureau has reviewed some installment vehicle title lenders' loan agreements that provide for delinquency fees if a payment is late.

Business model. Installment vehicle title loans generally perform in a manner similar to single-payment vehicle title loans. One study has analyzed data on repeat borrowing in installment vehicle title loans. The study found that in Q4 2014 in Texas, over 20 percent of installment vehicle title loans were refinanced in the same quarter the loan was made, and that during 2014 as a whole, the dollar volume of vehicle title loans refinanced almost equaled the volume of these loans originated.[267] More recent Texas regulator data indicates similar findings. Of the installment vehicle title loans originated in 2015, 39 percent were subsequently refinanced in the same year, and of all refinances of installment vehicle title loans in 2015, regardless of year of origination, 17 percent were refinanced five or more times.[268]

The Bureau has also analyzed installment vehicle lending data. The Bureau found that 20 percent of vehicle title installment loans were refinanced, with about 96 percent of refinances involving cash out. The median cash-out amount was $450, about 35 percent of the new loan's principal. At the loan level, 22 percent of installment vehicle title loans resulted in default and 8 percent in repossession; at the loan sequence level, 31 percent resulted in default and 11 percent in repossession.[269]

Other Nonbank Installment Loans

Product definition and regulatory environment. Before the advent of single-payment payday loans or online lending, and before widespread availability of credit cards, liquidity loans—also known as "personal loans" or "personal installment loans"—were offered by storefront nonbank installment lenders, often referred to as "finance companies." "Personal loans" are typically unsecured loans used for any variety of purposes and distinguished from loans where the lender generally requires the funds be used for the specific intended purpose, such as automobile purchase loans, student loans, and mortgage loans. As discussed below, these finance companies, and their newer online counterparts (that offer similar loan products but place more reliance on automated processes and innovative underwriting), have a different business model than payday installment lenders and vehicle title installment lenders. Nonetheless, some loans offered by these installment lenders fall within the proposal's definition of "covered longer-term loan," as they are made at interest rates that exceed 36 percent or include fees that result in a total cost of credit that exceeds 36 percent, and include repayment by access to the borrower's account or include a non-purchase money security interest in a consumer's vehicle. Additional information regarding the market for these finance company loans and their online counterparts is described below.

According to a report from a consulting firm using data derived from a nationwide consumer reporting agency, in 2015, finance companies originated 8.2 million personal loans (unsecured installment loans) totaling $37.6 billion in originations, of which approximately 6.8 million loans worth $24.3 billion were made to nonprime consumers (categorized as near prime, subprime, and deep subprime, with VantageScores of 660 and below), with an average loan size of about $3,593.[270] As of the end of 2015 there were 7.1 million outstanding loans worth $29.2 billion to nonprime consumers. These nonprime consumers accounted for 71 percent of outstanding accounts and 59 percent of outstanding balances, with an average balance outstanding of about $4,113. Subprime and deep subprime consumers, those with scores between 300 and 600 represented 41 percent of the borrowers and 28 percent of outstanding balances with an average balance of approximately $3,380.[271]

APRs at storefront locations in States that do not cap rates on installment loans can be 50 to 90 percent for subprime and deep subprime borrowers; APRs in States with rate caps are about 36 percent APR for near prime and subprime borrowers.[272] A survey of finance companies conducted in conjunction with a national trade association reported that 80 percent of loans were for $2,000 or less and 85 percent of loans had durations of 24 months or less (60 percent of loans had durations of one year or less).[273] No average loan amount was stated. Almost half of the loans had APRs between 49 and 99 percent; 9 percent of loans of $501 or less had APRs between 100 and 199 percent, but there was substantial rate variation among States.[274] Although APR calculations under Regulation Z include origination fees, lenders generally are not required to include within the finance charge application fees, document preparation fees, and add-on services such as optional credit insurance and guaranteed automobile protection.[275] A wider range and number of such up-front fees and add-on products and services appear to be charged by the storefront lenders than by their newer online counterparts.

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[266] Advance America requires proof of income for installment title loans in Illinois. *Payday Loans/Cash Advance,* Advance America, *https://www.advanceamerica.net/locations/details/store-4500/2828-S-17th-Ave-Unit-B/Broadview/IL/60155* (last visited March 10, 2016).

[267] Diane Standaert, Ctr. for Responsible Lending, *Payday and Car Title Lenders' Migration,* at 2-3.

[268] Texas Office of Consumer Credit Commissioner, *Credit Access Business (CAB) Annual Data Report, CY 2015* (Apr. 20, 2016), *available at http://occc.texas.gov/sites/default/files/uploads/reports/cab-annual-2015.pdf*

[269] *CFPB Report on Supplemental Findings,* at ch. 1.

[270] Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, & 13 (2016), *available at http://www.marketintelligencereports.com;* Experian & Oliver Wyman, *2015 Q3 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12 & 13 (2015), *available at http://www.marketintelligencereports.com;* Experian & Oliver Wyman, *2015 Q2 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, & 13 (2015), *available at http://www.marketintelligencereports.com;* Experian & Oliver Wyman, *2015 Q1 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, & 13 (2015), *available at http://www.marketintelligencereports.com.* These finance company personal loans are not segmented by cost and likely include some loans with a total cost of credit of 36 percent APR or less that would not be covered by the Bureau's proposed rule as described below in proposed § 1041.2(a)(18).

[271] Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans Report* at 20-22 figs. 27, 28, 30, & 31. In contrast, 29 percent of the loans and 41 percent of the loan volume were made to consumers with prime or superprime credit scores (VantageScore 3.0 of 661 or above). These loans likely have a total cost of credit of 36 percent APR or less and would not be covered by the Bureau's proposed rule.

[272] *See* Hecht, *Alternative Financial Services,* at 11 for listing of typical rates and credit scores for licensed installment lenders.

[273] Thomas A. Durkin, Gregory Elliehausen, and Min Hwang, *Findings from the AFSA Member Survey of Installment Lending,* at 24 tbl. 3 (2014), *available at http://www.masonlec.org/site/rte_uploads/files/Manne/11.21.14%20JLEP%20Consumer%20Credit%20and%20the%20American%20Economy/Findings%20from%20the%20AFSA%20Member%20Survey%20of%20Installment%20Lending.pdf.* It appears that lenders made loans in at least 27 States, but the majority of loans were from 10 States. *Id.* at 28 tbl. 9.

[274] *Id.* at 24 tbl. 3.

Finance companies generally hold State lending licenses in each State in which they lend money and are subject to each State's usury caps. Finance companies operate primarily from storefront locations, but some of them now offer complete online loan platforms.[276]

Industry size and structure. There are an estimated 8,000 to 10,000 storefront finance company locations in the United States[277]—about half to two-thirds the number of payday loan stores—with approximately seven million loans to nonprime borrowers outstanding at any given point in time.[278] Three publicly traded companies account for about 40 percent of these storefront locations.[279] Of these, one makes the majority of its loans to consumers with FICO Scores above 600, and another makes a majority of loans to consumers who have either FICO Scores below 600 or no credit scores due to an absence of credit experience. Another considers its customer base to include borrowers with FICO Scores as low as 500.[280] Among the three publicly traded finance companies in this market, one will make installment loans starting at about $500 and another at $1,500, as well as larger installment loans as high as $15,000 to $25,000.[281]

Given the range of loan sizes of personal loans made by finance companies, and the range of credit scores of some finance company borrowers, it is likely that some of these loans are used to address liquidity shortfalls while others are used either to finance new purchases or to consolidate and pay off other debt.

Marketing and underwriting practices. Customer acquisition methods are generally similar for finance companies and online installment lenders. Finance companies rely on direct mail marketing and online advertising including banner advertisements, search engine optimization, and purchasing online leads to drive traffic to stores. Where allowed by State law, some finance companies mail "live" or "convenience checks" that, when endorsed and cashed or deposited, commit the consumer to repay the loan at the terms stated in the accompanying loan disclosures.[282] Promotional offers include 0 percent interest loans for borrowers who prepare and file their tax returns at the lender's office or refer friends[283] and free credit scores and gift cards.[284]

Finance companies suggest that loans may be used for bill consolidation, home repairs or improvements, or unexpected expenses such as medical bills and automobile repairs.[285] Like their storefront counterparts, online installment lenders also offer promotions such as offers of lower rates on installment loans after a history of successful loan repayments.[286]

Finance companies secure some of their loans with vehicle titles or with a legal security interest in borrowers' vehicles, although the Bureau believes based on market outreach that these loans are generally underwritten based on an assessment of the consumer's income and expenses and are not based primarily on the value of the vehicle in which the interest is provided as collateral. The portfolio of finance company loans collateralized by security interests in vehicles varies by lender and some do not separately report this data from overall portfolio metrics that include direct larger loans, automobile purchase loans, real estate loans, and retail sales finance loans.[287] The Bureau's market outreach with finance companies and their trade associations indicates that at most, 20 to 25 percent of finance company loans—though a higher percentage of receivables—involved a non-purchase money security interest in a vehicle.

Finance companies typically engage in underwriting that includes a monthly net income and expense budget, a review of the consumer's credit report, and an assessment of monthly cash flow.[288] One trade association representing traditional finance companies has described the underwriting process used by these lenders as evaluating the borrower's "stability, ability, and willingness" to repay the loan.[289] In addition to the typical underwriting described above, one finance company has publicized that it is now utilizing alternative sources of consumer data to assess creditworthiness, including the borrower's history of utility payments and returned checks, as well as nontraditional data (such as the type of personal device used when applying for the loan).[290] Many finance companies report loan payment history to one or more of the nationwide consumer reporting agencies,[291] and the Bureau believes from market outreach that these lenders generally furnish on a monthly basis.

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[275] 12 CFR 1026.4(a) to (d).

[276] For example, see iLoan offered by Springleaf, now OneMain Holdings, *https://iloan.com/* (last visited Mar. 10, 2016). These may not necessarily be covered loans, depending on the total cost of credit. On November 15, 2015, Springleaf Holdings acquired OneMain Financial Holdings and became OneMain Holdings. OneMain Holdings Inc., 2015 Annual Report (Form 10-K) at 5 (Feb. 29, 2016), *available at https://www.sec.gov/Archives/edgar/data/1584207/000158420716000065/omh-20151231x10k.htm.*

[277] Hecht, *Alternative Financial Services,* at 10.

[278] Estimates of number of borrowers from Bureau staff calculations using Form 10-Ks of publicly traded companies and other material. For the estimate of seven million nonprime consumers, see Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans,* at 20-21 figs. 27 & 31. The Bureau believes that most consumers have only one finance company installment loan at any given time as lenders likely consolidate multiple loans or refinance additional needs into a single loan. Consequently, the estimate of seven million loans outstanding is roughly equal to the number of consumers with an outstanding installment loan.

[279] Estimates of storefront locations from Bureau staff calculations using Form 10-Ks of publicly traded companies and other materials.

[280] FICO is a producer of commercially available credit risk scores developed using data reported by the three national consumer reporting agencies. Base FICO Scores range from 350 to 850, and those below 670 are generally considered below average. For a description of FICO Scores, see myFICO, *Understanding FICO Scores,* at 4-5, *available at http://www.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf.* Prior to Springleaf's acquisition of One Main, Springleaf reported that 45 percent of its customers had FICO Scores below 600 and another 32 percent had scores between 601 and 660. At OneMain, a higher percentage of customers (40 percent) had FICO Scores between 601 and 660 and a lower percentage (22 percent) had scores below 600. One Main, *"New" OneMain Overview,* at 8 (Jan. 2016), *available at http://files.shareholder.com/downloads/AMDA-28PMI5/1420156915x0x873656/635ABE19-CE94-44BB-BB27-BC1C6B78266B/New_OneMain_Overview_Jan_2016.final.pdf.* World Acceptance reports over half of its domestic borrowers have either no credit score (< 5 percent) or FICO Scores under 600 (50 percent), while approximately 20 percent have scores above 650. World Acceptance Corp., Investor Presentation, at 16 (June 30, 2015), *available at http://www.worldacceptance.com/wp-content/uploads/2015/09/Investor-Presentation-6-30-15-reduced.pdf.* Regional Management's target borrowers have FICO Scores between 500-749. *See* Regional Mgmt. Corp., *Investor Presentation,* at 12 (Sept. 21, 2015), *available at http://www.regionalmanagement.com/phoenix.zhtml?c=246622&p=irol-irhome.*

[281] World Acceptance reports that two-thirds of its loans are for $1,500 or less, but its larger installment loans average about $3,400 and it will lend a maximum of about $13,500. World Acceptance Corp., *June 2015 Investor Presentation,* at 14-15. Regional Management makes loans of $500 to $2,500 but will make loans up to $25,000 excluding auto and retail loans. Regional Mgmt., *Sept. 2015 Investor Presentation,* at 4. OneMain Holdings through its Springleaf brand makes loans as small as $1,500 but will loan up to $15,000, excluding direct auto loans. Springleaf, *https://www.springleaf.com/* (last visited Apr. 29, 2016); One Main, *"New" OneMain Overview,* at 6.

[282] World Acceptance, 2015 Annual Report (Form 10-K) at Part I, Item 1 (June 1, 2015), *available at http://www.sec.gov/Archives/edgar/data/108385/000010838515000036/wrld-331201510xk.htm* and Regional Mgmt. Corp., 2015 Annual Report (Form 10-K) at 2 (Feb. 23, 2016), *available at https://www.sec.gov/Archives/edgar/data/1519401/000119312516473676/d105580d10k.htm.*

[283] *Loans,* World Acceptance Corp., *http://www.worldacceptance.com/loans/* (last visited Apr. 29, 2016).

[284] *Springleaf Rewards,* Springleaf, *https://www.springleaf.com/rewards* (last visited Apr. 29, 2016).

[285] *Need a Loan?,* 1st Franklin Fin. Corp., *http://www.1ffc.com/loans/#.VzEGvfnR9QL* (last visited May 9, 2016); *Personal Loans,* Springleaf, *https://www.springleaf.com/personal-loans* (last visited May 9, 2016) and *Personal Loans,* OneMain, *https://www.onemainfinancial.com/USCFA/finser/marktn/flow.action?contentId=personalloans* (last visited May 9, 2016).

[286] *Frequently Asked Questions, Why is Rise Needed,* Rise, *https://www.risecredit.com/frequently-asked-questions/* (last visited Apr. 29, 2016).

[287] World Acceptance estimates that 13 percent of the total number of loans and 20 percent of gross loan volume are vehicle-secured loans. World Acceptance Corp., 2015 Annual Report (Form 10-K), at Item 1A. OneMain Holdings reported that as of the end of 2015, $2.8 billion or 21 percent of personal loan net finance receivables were secured by titled personal property, such as automobiles. In contrast, the previous year, before acquiring OneMain, the portfolio (consisting solely of Springleaf loans) had 49 percent of personal loan receivables secured by titled personal property. OneMain Holdings Inc., 2015 Annual Report (Form 10-K), at 38.

From market monitoring activities, the Bureau is aware that there is an emerging group of online installment lenders entering the market with products that in some ways resemble the types of loans made by finance companies rather than payday installment loans. Some of these online installment lenders engage in sophisticated underwriting that involves substantial use of analytics and technology. These lenders utilize systems to verify application information including identity, bank account, and contact information focused on identifying fraud and borrowers intending to not repay. These lenders also review nationwide credit report information as well as data sources that provide payment and other information from wireless, cable, and utility company payments. The Bureau is aware that some online installment lenders obtain authorization to view borrowers' bank and credit card accounts to validate their reported income, assess income stability, and identify major recurring expenses.

Business model. Although traditional finance companies share a similar storefront distribution channel with storefront payday and vehicle title lenders, other aspects of their business model differs markedly. The publicly traded finance companies are concentrated in Midwestern and Southern States, with a particularly large number of storefronts in Texas.[292] A number of finance companies are located in rural areas.[293] One of the publicly traded finance companies states it competes on price and product offerings while another states it emphasizes customer relationships, customer service, and reputation.[294] Similarly, while the emerging online installment lenders share a similar distribution approach with online payday lenders, online hybrid payday installment lenders, and online payday installment lenders, their business models, particularly underwriting, are substantially different.

One of the indicators that underscores this contrast is default rates. In contrast to the high double digit charge-off rates discussed for some industry segments discussed above, reporting to a national consumer reporting agency indicates that during each quarter of 2015, between 2.9 and 3.4 percent of finance company loan balances were charged off. However, these figures include loans made to prime and superprime consumers that would likely not be covered loans under the total cost of credit threshold in proposed § 1041.2(a)(18).[295] In recent years, net charge-off rates at two publicly traded finance companies have ranged from 12 to 15 percent of average balances.[296]

Reborrowing in this market is relatively common, but finance companies refinance many existing loans before the loan maturity date, in contrast to the payday lending practice of rolling over debt on the loan's due date. The three publicly traded finance companies refinance 50 to 70 percent of all of their installment loans before the loan's due date.[297] At least one finance company states it will not "encourage" refinancing if the proceeds from the refinance (cash-out) are less than 10 percent of the refinanced loan amount.[298] In the installment context, refinancing refers to the lender extinguishing the existing loan and may include providing additional funds to the borrower, having the effect of allowing the borrower to skip a payment or reducing the total cost of credit relative to the outstanding loan.[299] The emerging online installment lenders also offer to refinance loans and some notify borrowers of their refinance options with email notifications and notices when they log in to their accounts.[300] Finance companies notify borrowers of refinance options by mail, telephone, text messages, on written payment receipts, and in stores.[301] State laws and company policies vary with respect to whether various loan origination and add-on fees must be refunded upon refinancing and prepayment and, if so, the refund methodology used.

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[288] American Fin. Servs. Ass'n, *Traditional Installment Loans, Still the Safest and Most Affordable Small Dollar Credit, available at https://www.afsaonline.org/Portals/0/Federal/White%20Papers/Small%20Dollar%20Credit%20TP.pdf; Loan FAQs,* Sun Loan Company, *http://www.sunloan.com/faq/* (last visited Apr. 29, 2016) ("We examine the borrower's stability, ability and willingness to repay the loan, which we attempt to assess using budgets and credit reports, among other things.").

[289] *Best Practices,* Nat'l Installment Lenders Ass'n, *http://nilaonline.org/best-practices/ (last visited Apr. 29, 2016).*

[290] Bryan Yurcan, American Banker, *Subprime Lender OneMain Using New Tools to Mind Old Data,* (Mar. 2, 2016), *http://www.americanbanker.com/news/bank-technology/subprime-lender-onemain-using-new-tools-to-mine-old-data-1079669-1.html.*

[291] *Best Practices,* Nat'l Installment Lenders Ass'n, *http://nilaonline.org/best-practices/ (last visited Apr. 29, 2014);* American Fin. Servs. Ass'n, *Traditional Installment Loans.*

[292] World Acceptance Corp., *June 2015 Investor Presentation,* at 5; Regional Mgmt., *Sept. 2015 Investor Presentation,* at 5.

[293] Based on the Bureau's market outreach and World Acceptance Corp., *June 2015 Investor Presentation,* at 12.

[294] World Acceptance Corp., 2015 Annual Report (Form 10-K), at Part I, Item 1; Regional Mgmt. Corp., 2015 Annual Report (Form 10-K), at 16.

[295] Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans,* at 33, fig. 54. In contrast, the 2013 survey of six million finance company loans conducted on behalf of a trade association of storefront finance companies, referenced above, found that more than 38 percent of the loans were delinquent on the survey date, but the survey did not track whether these loans ultimately cured or were charged-off. Durkin, at 14.

[296] World Acceptance Corp., 2015 Annual Report (Form 10-K), at Part II, Item 6. World Acceptance calculated net charge-offs as a percentage of average loan receivables by averaging the month-end gross loan receivables less unearned interest and deferred fees over the time period under consideration. Regional Management lists net charge-offs as a percent of average finance receivables on small installment loans to be in this range. Regional Mgmt. Corp., 2015 Annual Report (Form 10-K), at 26. OneMain Holdings charge-off rate is not included here as it does not separate out direct auto loans from personal loans.

[297] World Acceptance Corp. reports that 71.5 percent of its loans, measured by loan volume, were refinances, that the average loan is refinanced at month eight of a 13 month term, and that it used text messages to notify consumers that they may refinance existing loans, World Acceptance Corp., 2015 Annual Report (Form 10-K), at Part I, Item 1 and Part II, Item 7; World Acceptance Corp., *2015 Annual Report* at 3, *available at http://www.worldacceptance.com/wp-content/uploads/2015/07/2015-ANNUAL-REPORT_6-25-15.compressed.pdf.* Regional Management reports that 58.8 percent of 2015 loan originations were renewals. Regional Mgmt. Corp., 2015 Annual report (Form 10-K), at 15. About half of Springleaf's customers renew their loans. Springleaf Holdings, Inc., *Springleaf ABS Overview, ABS East Conference,* at 21 (Sept. 20015), *available at http://files.shareholder.com/downloads/AMDA-28PMI5/456541976x0x850559/08A5B379-9475-4AD4-9037-B6AEC6D3EC6D/SL_2015.09_ABS_East_2015_vF.pdf.*

[298] World Acceptance Corp., 2015 Annual Report (Form 10-K), at Part II, Item 7.

[299] Some installment lenders use the word "renewal" to describe this process, although it means satisfying the prior legal obligation in full rather than paying only the finance charge or a fee as occurs in the payday loan context.

[300] For example, Rise, offered by Elevate, notifies borrowers of refinance options that provide additional funds. *Frequently Asked Questions,* Rise, *https://www.risecredit.com/frequently-asked-questions* (last visited Mar. 10, 2016).

[301] World Acceptance Corp., *2015 Annual Report,* at 3.

Personal Lending by Banks and Credit Unions

Although as discussed above depository institutions over the last several decades have increasingly emphasized credit cards and overdraft services to meet customers short-term credit needs, they remain a major source of installment loans. According to an industry report, in 2015 banks and credit unions originated 3.8 million unsecured installment loans totaling $22.3 billion to nonprime consumers (defined as near prime, subprime, and deep subprime consumers with VantageScores below 660), with an average loan size of approximately $5,867.[302] As of the end of 2015, there were approximately 6.1 million outstanding bank and credit union unsecured installment loans to these nonprime consumers, with $41.5 billion in outstanding loan balances.[303] Approximately 29 percent of the number of outstanding bank loans (representing 21 percent of outstanding balances) and 49 percent of the credit union loans (representing 35 percent of balances) were to these nonprime consumers.[304]

National banks, most State-chartered banks, and State credit unions are permitted under existing Federal law to charge interest on loans at the highest rate allowed by the laws of the State in which the lender is located (lender's home State).[305] The bank or State-chartered credit union may then charge the interest rate of its home State on loans it makes to borrowers in other States without needing to comply with the usury limits of the States in which it makes the loans (borrower's home State). Federal credit unions must not charge more than 18 percent interest rate, with an exception for payday alternative loans described below.[306] The laws applicable to Federal credit unions are discussed below.

The Bureau believes that the vast majority of the personal loans made by banks and credit unions have a total cost of credit of 36 percent or less, and thus would not be covered loans under the Bureau's proposal. However, through market outreach the Bureau is also aware that many community banks make small personal loans to existing customers who face liquidity shortfalls, at least on an ad hoc basis at relatively low interest rates but some with an origination fee that would bring the total cost of credit to more than 36 percent. These products are generally offered to existing customers as an accommodation and are not mass marketed.

Two bank trade associations recently surveyed their members about their personal loan programs.[307] Although the surveys were small and may not have been representative, both found that banks continue to make personal loans. One survey generated 93 responses with banks ranging in size from $37 million in assets to $48.6 billion, with a heavy concentration of community banks (all bank survey).[308] The second survey was limited to community banks (community bank survey) and generated 132 responses.[309] The surveys, though asking different questions and not necessarily nationally representative, found:

- *Loan size and duration.* In the community bank survey, 74 percent of the respondents reported that they make loans under $1,000 for durations longer than 45 days, with an average loan amount of $872. No average loan term was reported. Ninety-five percent reported making personal loans larger than $1,000, with an average loan size of under $4,000. In the all bank survey, 73 percent reported making loans of $5,000 or less for a term of less than one year, either as an accommodation for existing customers or as an established lending program. Slightly more than half of the respondents reported making more than 50 such loans in 2014.
- *Cost.* In the community bank survey the average of the "typical interest rate" reported by the respondents was 12.1 percent for smaller dollar loans and the average maximum rate for such loans was 16.7 percent. Average interest rates for loans greater than $1,000 were about 250 basis points lower. At the same time, two-thirds of the banks reported that they also charge loan fees for the smaller loans and 70 percent do so for the larger loans over $1,000, with fees almost equally divided between application fees and origination fees. For the smaller loans, the median fee when set as a fixed dollar amount was $50 and the average fee $61.44 and when set as a percentage of the loan the average was 3 percent; average fees for loans above $1,000 were slightly higher and average percentage rates slightly lower. The all bank survey did not obtain data at this granular level but 53 percent of the respondents reported that the total cost of credit on at least some loans was above 36 percent.

The community bank survey provided some information about the lending practices of banks that offer small-dollar loans.

- *Underwriting.* While the Bureau's outreach indicates that these loans are often thought of by the banks as "relationship loans" underwritten based on the bank's knowledge of the customer, in the community bank survey 93 percent reported that they also verified major financial obligations and debt and 78 percent reported that they verified income.

The two bank trade association surveys also provided information relative to repeat use and losses.

- *Rollovers.* In the community bank survey 52 percent of respondents reported that they do not permit rollovers and 26 percent reported that they allow only a single rollover. Repayment methods vary and include manual payments as well as automated payments. Financial institutions that make loans to account holders retain the contractual right to set off payments due from existing accounts in the event of nonpayment.

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[302] Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, & 13; Experian & Oliver Wyman, *2015 Q3 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12 & 13, *2015 Q2 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, & 13; Experian & Oliver Wyman, *2015 Q1 Market Intelligence Report: Personal Loans Report,* at 11-13 figs. 9, 10, 12, 13.

[303] Experian & Oliver Wyman, *2015 Q4 Market Intelligence Report: Personal Loans,* at 20-22 figs. 27, 28, 30, & 31.

[304] *Id.* In contrast, prime and superprime consumers accounted for 70 percent of the number of outstanding loans and 79 percent of outstanding loan balances at banks, and 51 percent of the number of outstanding loans and 65 percent of outstanding balances at credit unions.

[305] *See generally* 12 U.S.C. 85 (governing national banks); 12 U.S.C. 1463 (g) (governing savings associations); 12 U.S.C. 1785 (g) (governing credit unions); and 12 U.S.C. 1831d (governing State banks). Alternatively, these lenders may charge a rate that is no more than 1 percent above the 90-day commercial paper rate in effect at the Federal Reserve Bank in the Federal Reserve district in which the lender is located (whichever is higher). *Id.*

[306] Nat'l Credit Union Admin., *Board Action Bulletin, Board Meeting Results for June 18, 2015,* at 2-3, *available at https://www.ncua.gov/about/Documents/Board%20Actions/BAB20150618.pdf* (announcing the extension of the general 18 percent rate ceiling and the 28 percent rate ceiling on PALs through March 10, 2017); 12 U.S.C. 1757(5)(A)(vi).

[307] One association represents small, regional and large banks with $12 trillion in deposits and that extend more than $8 trillion in loans. The other represents more than 6,000 community banks with 52,000 locations, holding $3.6 trillion in assets, $2.9 trillion in deposits, and $2.5 trillion in loans to consumers, small businesses and agricultural loans.

[308] American Bankers Association, *Small Dollar Lending Survey* (Dec. 2015) (on file); ABA Banking Journal, *ABA Survey: Banks Are Making Effective Small Dollar Loans* (Dec. 8, 2015), *http://bankingjournal.aba.com/2015/12/aba-survey-banks-are-making-effective-small-dollar-loans/* and Letter from Virginia O'Neill, Senior Vice President, American Bankers Ass'n, to Richard Cordray, Director, Bureau of Consumer Fin. Prot. (Dec. 1, 2015) (re: ABA Small Dollar Lending Survey).

[309] Letter from Viveca Y. Ware, Executive Vice President, Independent Cmty. Bankers of America, to David Silberman, Associate Director, Bureau of Consumer Fin. Prot. (Oct. 6, 2015); Ryan Hadley [hereinafter ICBA Letter October 6, 2015], ICBA, *2015 ICBA Community Bank Personal Small Dollar Loan Survey* (Oct. 29, 2015) (on file); Letter from Viveca Y. Ware, Executive Vice President, Independent Cmty. Bankers of America, to David Silberman, Associate Director, Consumer Financial Protection Bureau (Nov. 3, 2015) (on file).

- *Charge-offs.* Both bank surveys reported low charge-off rates: in the community bank survey the average net charge-off rate for loans under $1,000 was 1 percent and for larger loans was less than 1 percent (.86 percent). In the all bank survey, 34 percent reported no charge-offs and 61 percent reported charge-offs of 3 percent or less.

There is little data available on the demographic characteristics of borrowers who take liquidity loans from banks. The Bureau's market monitoring indicates that a number of banks offering these loans are located in small towns and rural areas. Further, market outreach with bank trade associations indicates that it is not uncommon for borrowers to be in non-traditional employment and have seasonal or variable income.

As noted above, Federal credit unions may not charge more than 18 percent interest. However, as described below, they are authorized to make some small-dollar loans at rates up to 28 percent interest plus an applicable fee.

Through market monitoring and outreach, the Bureau is aware that a significant number of credit unions, both Federal and State chartered, offer liquidity loans to their members, at least on an accommodation basis. As with banks, these are small programs and may not be widely advertised. The credit unions generally engage in some sort of underwriting for these loans, including verifying borrower income and its sufficiency to cover loan payments, reviewing past borrowing history with the institution, and verifying major financial obligations. Many credit unions report these loans to a consumer reporting agency. On a hypothetical $500, 6-month loan, many credit unions would charge a 36 percent or less total cost of credit.

Some Federal credit unions offer small-dollar loans aimed at consumers with payday loan debt to pay off these loans at interest rates of 18 percent or less with application fees of $50 or less.[310] Other Federal credit unions (and State credit unions) offer installment vehicle title loans with APRs below 36 percent.[311] The total cost of credit, when application fees are included, may range from approximately 36 to 70 percent on a small loan of about $500, depending on the loan term.

Federal credit unions are also authorized to offer "payday alternative loans." In 2010, the NCUA adopted an exception to the interest rate limit under the Federal Credit Union Act that permitted Federal credit unions to make payday alternative loans at an interest rate of up to 28 percent plus an application fee, "that reflects the actual costs associated with processing the application" up to $20.[312] PALs may be made in amounts of $200 to $1,000 to borrowers who have been members of the credit union for at least one month. PAL terms range from one to six months, may not be rolled over, and borrowers are limited one PAL at a time and no more than three PALs from the same credit union in a rolling six-month period. PALs must fully amortize and the credit union must establish underwriting guidelines such as verifying employment by requiring at least two pay stubs.[313]

In 2015, over 700 Federal credit unions (nearly 20 percent of all Federal credit unions) offered PALs, with originations at $123.3 million, representing a 7.2 percent increase from 2014.[314] In 2014, the average PAL amount was about $678 and carried a median interest rate of 25 percent.[315] The NCUA estimated that, based on the median PAL interest rate and loan size for 2013, the APR calculated by including all fees (total cost of credit) for a 30-day PAL was approximately 63 percent.[316] However, the Bureau believes based on market outreach that the average PAL term is about 100 days, resulting in a total cost of credit of approximately 43 percent.[317] Based on NCUA calculations, during 2014, annualized PAL charge-offs net of recoveries, as a percent of average PAL balances outstanding, were 7.5 percent.[318]

D. Initiating Payment from Consumers' Accounts

As discussed above, payday and payday installment lenders nearly universally obtain at origination one or more authorizations to initiate withdrawal of payment from the consumer's account. There are a variety of payment options or channels that they use to accomplish this goal, and lenders frequently obtain authorizations for multiple types. Different payment channels are subject to different laws and, in some cases, private network rules, leaving lenders with broad control over the parameters of how a particular payment will be pulled from a consumer's account, including the date, amount, and payment method.

Obtaining Payment Authorization

A variety of payment methods enable lenders to use a previously-obtained authorization to initiate a withdrawal from a consumer's account without further action from the consumer. These methods include paper signature checks, remotely created checks (RCCs) and remotely created payment orders (RCPOs),[319] and electronic payments like ACH[320] and debit and prepaid card transactions. Payday and payday installment lenders—both online and in storefronts—typically obtain a post-dated check or electronic payment authorization from consumers for repayments of loans.[321] For storefront payday loans, lenders typically obtain a post-dated check (or, where payday installment products are authorized, a series of postdated checks) that they can use to initiate a check or ACH transaction from a consumer's account.[322] For an online loan, a consumer often provides bank account information to receive the loan funds, and the lender often uses that bank account information to obtain payment from the consumer.[323] This account information can be used to initiate an ACH payment from a consumer's account. Typically, online lenders require consumers to authorize payments from their account as part of their agreement to receive the loan proceeds electronically.[324] Some traditional installment lenders also obtain an electronic payment authorization from their customers.

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[310] See, for example, Nix Lending's Payday Payoff Loan offered through Kinecta Federal Credit Union at an 18 percent APR plus a $49.95 application fee. *Payday Payoff® Loan,* Nix Neighborhood Lending, *http://nixlending.com/en/personal-loans/detail/payday-payoff-loan* (last visited March 9, 2016). MariSol Federal Credit Union offers a Quick Loan of $500 or less at an 18 percent APR with a $50 application fee to be repaid over four months. Payment includes a $20 deposit into a savings account. *Personal Loans,* MariSol Federal Credit Union, *https://marisolcu.org/loans_personal.html (last visited Apr. 29, 2016); Consumer Loan Rates,* MariSol Federal; Credit Union, *https://marisolcu.org/rates_loan_view.html (last visited Apr. 29, 2016).*

[311] For a listing of several credit unions with rates below 25 percent, see Pew, *Auto Title Loans: Market Practices and Borrowers' Experience,* at 24.

[312] 12 CFR 701.21(c)(7)(iii). Application fees charged to all applicants for credit are not part of the finance charge that must be disclosed under Regulation Z. 12 CFR 1026.4(c).

[313] 12 CFR 701.21(c)(7)(iii).

[314] Nat'l Credit Union Admin., *Dec. 2015 FCU 5300 Call Report Aggregate Financial Performance Reports (FPRs), available at https://www.ncua.gov/analysis/Pages/call-report-data/aggregate-financial-performance-reports.aspx.*

[315] NCUA estimates based on public Call Report data, *available at https://www.ncua.gov/analysis/Pages/call-report-data.aspx.*

[316] Based on a PAL of $630 for 30 days at a rate of 24.6 percent with a $20 application fee, the 2014 terms provided in NCUA's comment letter to the Department of Defense. Letter from Debbie Matz, Chairman, NCUA, to Aaron Siegel, Alternate OSD Federal Register Liaison Officer, Dep't of Defense, at 5 (Dec. 16, 2014) [hereinafter NCUA Letter to Department of Defense (Dec. 16, 2014)] (re: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Docket DOD-2013-OS-0133, RIN 0790-AJ10), *available at https://www.regulations.gov/#!documentDetail;D=DOD-2013-OS-0133-0171.*

[317] Bureau staff calculations based on an average PAL of $678, the 2014 average amount, at a 25 percent interest rate with a $20 application fee (figures based on NCUA calculations from call report data, as noted above), due in 3 months with 3 monthly payments.

[318] NCUA estimates based on public Call Report data, *available at https://www.ncua.gov/analysis/Pages/call-report-data.aspx.*

[319] A remotely created check or remotely created payment order is a type of check that is created by the payee—in this case, it would be created by the lender—and processed through the check clearing system. Given that the check is created by the lender, it does not bear the consumer's signature. *See* Regulation CC, 12 CFR 229.2(fff) (defining remotely created check); Telemarketing Sales Rule, 16 CFR 310(cc) (defining "remotely created payment order" as a payment instrument that includes remotely created checks).

[320] In order to initiate an ACH payment from a consumer's account, a lender must send a request

Payday and payday installment lenders often take authorization for multiple payment methods, such as taking a post-dated check along with the consumer's debit card information.[325] Consumers usually provide the payment authorization as part of the loan origination process.[326]

For storefront payday loans, providing a post-dated check is typically a requirement to obtain a loan. Under the Electronic Fund Transfer Act (EFTA) lenders cannot condition credit on obtaining an authorization from the consumer for "preauthorized" (recurring) electronic fund transfers,[327] but in practice online payday and payday installment lenders are able to obtain such authorizations from consumers for almost all loans. The EFTA provision concerning compulsory use does not apply to paper checks and one-time electronic fund transfers. Moreover, even for loans subject to the EFTA compulsory use provision, lenders use various methods to obtain electronic authorizations. For example, although some payday and payday installment lenders provide consumers with alternative methods to repay loans, these options may be burdensome and may significantly change the terms of the loan. For example, one lender increases its APR by an additional 61 percent or 260 percent, depending on the length of the loan, if a consumer elects a cash-only payment option for its installment loan product, resulting in a total APR of 462 percent (210 day loan) to 780 percent (140 day loan).[328] Other lenders change the origination process if consumers do not immediately provide account access. For example, some online payday lenders require prospective customers to contact them by phone if they do not want to provide a payment authorization and wish to pay by money order or check at a later time. Other lenders delay the disbursement of the loan proceeds if the consumer does not immediately provide a payment authorization.[329]

Banks and credit unions have additional payment channel options when they lend to consumers who have a deposit account at the same institution. As a condition of certain types of loans, many financial institutions require consumers to have a deposit account at that same institution.[330] The loan contract often authorizes the financial institution to pull payment directly from the consumer's account. Since these payments can be processed through an internal transfer within the bank or credit union, these institutions do not typically use external payment channels

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(also known as an "entry") through an originating depository financial institution (ODFI). An ODFI is a bank or other financial institution that the lender or the lender's payment processor has a relationship with. ODFIs aggregate and submit batches of entries for all of their originators to an ACH operator. The ACH operators sort the ACH entries and send them to the receiving depository financial institutions (RDFI) that hold the individual consumer accounts. The RDFI then decides whether to debit the consumer's account or to send it back unpaid. ACH debit transactions generally clear and settle in one business day after the payment is initiated by the lender. The private operating rules for the ACH network are administered by the National Automated Clearinghouse Association (NACHA), an industry trade organization.

[321] *See, e.g.,* QC Holdings, Inc., 2014 Annual Report (Form 10-K), at 6 (Mar. 12, 2015), *available at https://www.sec.gov/Archives/edgar/data/1289505/000119312515088809/d854360d10k.htm* ("Upon completion of a loan application, the customer signs a promissory note with a maturity of generally two to three weeks. The loan is collateralized by a check (for the principal amount of the loan plus a specified fee), ACH authorization or a debit card."); *see also* Advance America, 2011 Annual Report (Form 10-K) at 45 (Mar. 15, 2012), *available at https://www.sec.gov/Archives/edgar/data/1299704/000104746912002758/a2208026z10-k.htm* ("After the required documents presented by the customer have been reviewed for completeness and accuracy, copied for record-keeping purposes, and the cash advance has been approved, the customer enters into an agreement governing the terms of the cash advance. The customer then provides a personal check or an Automated Clearing House ("ACH") authorization, which enables electronic payment from the customer's account, to cover the amount of the cash advance and charges for applicable fees and interest of the balance due under the agreement."); ENOVA Int'l, Inc., 2014 Annual Report (Form 10-K), at 6 (Mar. 20, 2015), *available at https://www.sec.gov/Archives/edgar/data/1529864/000156459015001871/enva-10k_20141231.htm* ("When a customer takes out a new loan, loan proceeds are promptly deposited in the customer's bank account or onto a debit card in exchange for a preauthorized debit for repayment of the loan from the customer's account.").

[322] *Id.*

[323] *See, e.g., Frequently Asked Questions (FAQs),* Great Plains Lending d/b/a Cash Advance Now, *https://www.cashadvancenow.com/FAQ.aspx* (last visited May 16, 2016) ("If we extend credit to a consumer, we will consider the bank account information provided by the consumer as eligible for us to process payments against. In addition, as part of our information collection process, we may detect additional bank accounts under the ownership of the consumer. We will consider these additional accounts to be part of the application process.").

[324] *See, e.g.,* One Click Cash and US Fast Cash, Authorization to Initiate ACH Debit and Credit Entries, Ex. 1 at 38, 55, *Labajo* v. *First International Bank & Trust,* No. 14-00627 (C.D. Cal. May 23, 2014), ECF No. 26-3.

[325] *See, e.g.,* Castle Payday Loan Agreement, Ex. A, *Parm* v. *BMO Harris Bank,* N.A., No. 13-03326 (N.D. Ga. Dec. 23, 2013), ECF No. 60-1 ("You may revoke this authorization by contacting us in writing at *ach@castlepayday.com* or by phone at 1-888-945-2727. You must contact us at least three (3) business days prior to when you wish the authorization to terminate. If you revoke your authorization, you authorize us to make your payments by remotely-created checks as set forth below."); Plain Green Loan Agreement, Ex. 5, *Booth* v. *BMO Harris Bank, N.A.,* No. 13-5968 (E.D. Pa. Dec. 13, 2013), ECF No. 41-8 (stating that in the event that the consumer terminates an ACH authorization, the lender would be authorized to initiated payment by remotely created check); Sandpoint Capital Loan Agreement, Ex. A, *Labajo,* No. 14-627 (May 23, 2014), ECF 25-1 (taking ACH and remotely created check authorization).

[326] *See, e.g.,* Advance America, 2011 Annual Report (Form 10-K), at 10. ("To obtain a cash advance, a customer typically . . . enters into an agreement governing the terms of the cash advance, including the customer's agreement to repay the amount advanced in full on or before a specified due date (usually the customer's next payday), and our agreement to defer the presentment or deposit of the customer's check or ACH authorization until the due date.").

[327] EFTA and its implementing regulation, Regulation E, prohibit the conditioning of credit on an authorization for a preauthorized recurring electronic fund transfer. *See* 12 CFR 1005.10(e)(1) ("No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.").

[328] Cash Store, *Installment Loans Fee Schedule,* New Mexico (last visited May 16, 2016), *https://www.cashstore.com/-/media/cashstore/files/pdfs/nm%20ins%20552014.pdf.*

[329] *See, e.g.,* Mobiloans, *Line of Credit Terms and Conditions, www.mobiloans.com/terms-and-conditions* (last visited May 17, 2016) ("If you do not authorize electronic payments from your Demand Deposit Account and instead elect to make payments by mail, you will receive your Mobiloans Cash by check in the mail.").

[330] *See, e.g.,* Fifth Third Bank, *Early Access Terms & Conditions, Important Changes to Fifth Third Early Access Terms & Conditions,* at 3 (last visited May 17, 2016), *available at https://www.53.com/doc/pe/pe-eax-tc.pdf* (providing eligibility requirements including that the consumer "must have a Fifth Third Bank checking deposit account that has been open for the past 90 (ninety) days and is in good standing").

to complete an internal payment transfer.

Exercising Payment Authorizations

For different types of loans that would be covered under the proposed rule, lenders use their authorizations to collect payment differently. As discussed above, most storefront lenders encourage or require consumers to return to their stores to pay in cash, roll over, or otherwise renew their loans. The lender often will deposit a post-dated check or initiate an electronic fund transfer only where the lender considers the consumer to be in "default" under the contract or where the consumer has not responded to the lender's communications.[331] Bureau examiners have cited one or more payday lenders for threatening to initiate payments from consumer accounts that were contrary to the agreement, and that the lenders did not intend to initiate.[332]

In contrast, online lenders typically use the authorization to collect all payments, not just those initiated after there has been some indication of distress from the consumer. Moreover, as discussed above, online lenders offering "hybrid" payday loan products structure them so that the lender is authorized to collect a series of interest-only payments—the functional equivalent of paying finance charges to roll over the loan—before full payment or amortizing payments are due.[333] The Bureau also is aware that some online lenders, although structuring their product as nominally a two-week loan, automatically roll over the loan every two weeks unless the consumer takes affirmative action to make full payment.[334] The payments processed in such cases are for the cost of the rollover rather than the full balance due.

As a result of these distinctions, storefront and online lenders have different success rates in exercising such payment authorizations. Some large storefront lenders report that they initiate payment attempts in less than 10 percent of cases, and that 60 to 80 percent of those attempts are returned for non-sufficient funds.[335] Bureau analysis of ACH payments by online payday and payday installment lenders, which typically collect all payments by initiating a transfer from consumers' accounts, indicates that for any given payment only about 6 percent fail on the first try. However, over an eighteen-month observation period, 50% of online borrowers were found to experience at least one payment attempt that failed or caused an overdraft and over-third of the borrowers experienced more than one such incident.

Lenders typically charge fees for these returned payments, sometimes charging both a returned payment fee and a late fee.[336] These fees are in addition to fees, such as NSF fees, that may be charged by the financial institution that holds the consumer's account.

The Bureau found that if an electronic payment attempt failed, online lenders try again three-quarters of the time. However, after an initial failure the lender's likelihood of failure jumps to 70 percent for the second attempt and 73 percent for the third. Of those that succeed, roughly a third result in an overdraft.

Both storefront and online lenders also frequently change the ways in which they attempt to exercise authorizations after one attempt has failed. For example, many typically make additional attempts to collect initial payment due.[337] Some lenders attempt to collect the entire payment amount once or twice within a few weeks of the initial failure. The Bureau, however, is aware of online and storefront lenders that use more aggressive and unpredictable payment collection practices, including breaking payments into multiple smaller payments and attempting to collect payment multiple times in one day or over a short period of time.[338] The cost to lenders to repeatedly attempt payment depends on their contracts with payment processors and commercial banks, but is generally nominal; the Bureau estimates the cost is in a range of 5 to 15 cents for an ACH transaction.[339] These practices are discussed in more detail in Market Concerns—Payments.

As noted above, banks and credit unions that lend to their account holders can use their internal system to transfer funds from the consumer accounts and do not need to utilize the payment networks. Deposit advance products and their payment structures are discussed further in part II B. The Bureau believes that many small dollar loans with depository institutions are paid through internal transfers.

Due to the fact that lenders obtain authorizations to use multiple payment channels and benefit from flexibility in the underlying payment systems, lenders generally enjoy broad discretion over the parameters of how a particular payment will be pulled from a consumer's account, including the date, amount, and payment method. For example, although a check specifies a date, lenders may not present the check on that date. Under UCC Section 4-401, merchants can present checks for payment even if the check specifies a later date.[340] Lenders sometimes attempt to collect payment on a different date from the one stated on a check or original authorization. They may shift the attempt date in order to maximize the likelihood that funds will be in the account; some use their own models to determine when to collect, while others use predictive payment products provided by third parties that estimate when funds are most likely to be in the account.[341]

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[331] Payday and payday installment lenders may contact consumers a few days before the payment is due to remind them of their upcoming payment. This is a common practice, with many lenders calling the consumer 1 to 3 days before the payment is due, and some providing reminders through text or email.

[332] Bureau of Consumer Fin. Prot., *Supervisory Highlights*, at 20 (Spring 2014), *available at http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf*.

[333] *See, e.g.*, Integrity Advance Loan Agreement, CFPB Notice of Charges Against Integrity Advance, LLC, CFPB No. 2015-CFPB-0029, at 5 (Nov. 18, 2015), *available at http://files.consumerfinance.gov/f/201511_cfpb_notice-of-charges-integrity-advance-llc-james-r-carnes.pdf* (providing lender contract for loan beginning with four automatic interest-only rollover payments before converting to a series of amortizing payments).

[334] *See, e.g.*, Cash Jar Loan Agreement, Exhibit A, *Riley* v. *BMO Harris Bank, N.A.*, No. 13-1677 (D.D.C. Jan. 10, 2014), ECF No. 33-2 (interpreting silence from consumer before the payment due date as a request for a loan extension; contract was for a 14 day single payment loan, loan amount financed was $700 for a total payment due of $875).

[335] One major lender with a predominantly storefront loan portfolio, QC Holdings, notes that in 2014, 91.5 percent of its payday and installment loans were repaid or renewed in cash. QC Holdings 2014 Annual Report (Form 10-K), at 7. For the remaining 8.5 percent of loans for which QC Holdings initiated a payment attempt, 78.5 percent were returned due to non-sufficient funds. *Id.* Advance America, which offers mostly storefront payday and installment loans, initiated check or ACH payments on approximately 6.7 and 6.5 percent, respectively, of its loans in 2011; approximately 63 and 64 percent, respectively, of those attempts failed. Advance America 2011 Annual Report (Form 10-K), at 27.

[336] *See*, Advance America 2011 Annual Report (Form 10-K), at 8 ("We may charge and collect fees for returned checks, late fees, and other fees as permitted by applicable law. Fees for returned checks or electronic debits that are declined for non-sufficient funds (NSF) vary by State and range up to $30, and late fees vary by State and range up to $50. For each of the years ended December 31, 2011 and 2010, total NSF fees collected were approximately $2.9 million and total late fees collected were approximately $1 million and $0.9 million, respectively."); *Frequently Asked Questions, Mypaydayloan.com, https://www.mypaydayloan.com/faq#loancost* (last visited May. 17, 2016) ("If your payment is returned due to NSF (or Account Frozen or Account Closed), our collections department will contact you to arrange a second attempt to debit the payment. A return item fee of $25 and a late fee of $50 will also be collected with the next debit.").

[337] *See CFPB Supervisory Highlights*, at 20 (Spring 2014) ("Upon a borrower's default, payday lenders frequently will initiate one or more preauthorized ACH transactions pursuant to the loan agreement for repayment from the borrower's checking account."); First Cash Fin. Servs., Inc. 2014 Annual Report (Form 10-K) at 5 (Feb. 12, 2015) ("Banks return a significant number of ACH transactions and customer checks deposited into the Independent Lender's account due to insufficient funds in the customers' accounts . . . The Company subsequently collects a large percentage of these bad debts by redepositing the customers' checks, ACH collections or receiving subsequent cash repayments by the customers."); *Frequently Asked Questions*, Advance America, *https://www.onlineapplyadvance.com/faq* (last visited May 17, 2016) ("Once we present your bank with your ACH authorization for payment, your bank will send the specified amount to CashNetUSA. If the payment is returned because of insufficient funds, CashNetUSA can and will re-present the ACH Authorization to your bank.").

[338] *See, e.g., CFPB Online Payday Loan Payments.*

[339] The Bureau reviewed publicly available litigation documents and fee schedules posted online by originating depository institutions to compile these estimates. However, because of the limited availability of private contracts and variability of commercial bank fees, these estimates are tentative. Originators typically also pay their commercial bank or payment processor fees for returned ACH and check payments. These fees appear to range widely, from 5 cents to several dollars.

Moreover, the checks provided by consumers during origination often are not processed as checks. Rather than sending these payments through the check clearing network, lenders often process these payments through the ACH network. They are able to use the consumer account number and routing number on a check to initiate an ACH transaction. When lenders use the ACH network in a first attempt to collect payment, the lender has used the check as a source document and the payment is considered an electronic fund transfer under EFTA and Regulation E,[342] which generally provide additional consumer protections—such as error resolution rights—beyond those applicable to checks. However, if a transaction is initially processed through the check system and then processed through the ACH network because the first attempt failed for insufficient funds, the subsequent ACH attempt is *not* considered an electronic fund transfer under current Regulation E.[343] Similarly, consumers may provide their account and routing number to lenders for the purposes of an ACH payment, but the lender may use that information to initiate a remotely created check that is processed through the check system and thus may not receive Regulation E protections.[344]

Payment System Regulation and Private Network Requirements

Different payment mechanisms are subject to different laws and, in some cases, private network rules that affect how lenders can exercise their rights to initiate withdrawals from consumers' accounts and how consumers may attempt to limit or stop certain withdrawal activity after granting an initial authorization. Because ACH payments and post-dated checks are the most common authorization mechanisms used by payday and payday installment lenders, this section briefly outlines applicable Federal laws and National Automated Clearinghouse Association (NACHA) rules concerning stop payment rights, prohibitions on unauthorized payments, notices where payment amounts vary, and rules governing failed withdrawal attempts.

NACHA recently adopted several changes to the ACH network rules in response to complaints about problematic behavior by payday and payday installment lenders, including a rule that allows it to more closely scrutinize originators who have a high rate of returned payments.[345] Issues around monitoring and enforcing those rules and their application to problems in the market for covered loans are discussed in more detail in Market Concerns—Payments.

Stop payment rights. For preauthorized (recurring) electronic fund transfers,[346] EFTA grants consumers a right to stop payment by issuing a stop payment order through their depository institution.[347] The NACHA private rules adopt this EFTA provision along with additional stop payment rights. In contrast to EFTA, NACHA provides consumers with a stop payment right for both one-time and preauthorized transfers.[348] Specifically, for recurring transfers, NACHA Rules require financial institutions to honor a stop payment order as long as the consumer notifies the bank at least 3 banking days before the scheduled debit.[349] For one-time transfers, NACHA Rules require financial institutions to honor the stop payment order as long as the notification provides them with a "reasonable opportunity to act upon the order." [350] Consumers may notify the bank or credit union verbally or in writing, but if the consumer does not provide written confirmation the oral stop payment order may not be binding beyond 14 days. If a consumer wishes to stop all future payments from an originator, NACHA Rules allow a bank or credit union to require the consumer to confirm in writing that she has revoked authorization from the originator.

Checks are also subject to a stop payment right under the Uniform Commercial Code (UCC).[351] Consumers have a right to stop-payment on any check by providing the bank with oral (valid for 14 days) or written (valid for 6 months) notice. To be effective, the stop payment must describe the check "with reasonable certainty" and give the bank enough information to find the check under the technology then existing.[352] The stop payment also must be given at a time that affords the bank a reasonable opportunity to act on the stop payment before it becomes liable for the check under U.C.C. 4-303.

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[340] UCC Section 4-401(c)("A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty.").

[341] *See, e.g.,* Press Release, Clarity Servs., Inc, *ACH Presentment Will Help Lenders Reduce Failed ACH Pulls* (Aug. 1, 2013), *https://www.clarityservices.com/clear-warning-ach-presentment-will-help-lenders-reduce-failed-ach-pulls/*; *Service Offerings,* FactorTrust, *http://ws.factortrust.com/products/* (last visited May 4, 2016); *Bank Account Verify,* Microbilt, *http://www.microbilt.com/bank-account-verification.aspx* (last visited May 4, 2016); *Sufficient Funds Assurance,* DataX Lending Intelligence, *http://www.dataxltd.com/ancillary-services/successful-collections/* (last visited May 4, 2016).

[342] 12 CFR 1005.3(b)(2)(i) ("This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.").

[343] Supplement I, Official Staff Interpretations, 12 CFR 1005.3(c)(1) ("The electronic re-presentment of a returned check is not covered by Regulation E because the transaction originated by check.").

[344] Remotely created checks are particularly risky for consumers because they have been considered to fall outside of protections for electronic fund transfers under Regulation E. Also, unlike signature paper checks, they are created by the entity seeking payment (in this case, the lender)—making such payments particularly difficult to track and reverse in cases of error or fraud. Due to concerns about remotely created checks and remotely created payment orders, the FTC recently banned the use of these payment methods by telemarketers. *See* FTC Final Amendments to Telemarketing Sales Rule, 80 FR 77520 (Dec. 14, 2015).

[345] *See ACH Network Risk and Enforcement Topics,* NACHA (Jan. 1, 2015), *https://www.nacha.org/rules/ach-network-risk-and-enforcement-topics-january-1-2015* (providing an overview of changes to the NACHA Rules); Operations Bulletin, NACHA, *ACH Operations Bulletin #1-2014: Questionable ACH Debit Origination: Roles and Responsibilities of ODFIs and RDFIs* (Sept. 30, 2014), *https://www.nacha.org/news/ach-operations-bulletin-1-2014-questionable-ach-debit-origination-roles-and-responsibilities* ("During 2013, the ACH Network and its financial institution participants came under scrutiny as a result of the origination practices of certain businesses, such as online payday lenders, in using the ACH Network to debit consumers' accounts.").

[346] A preauthorized transfer is "an electronic fund transfer authorized in advance to recur at substantially regular intervals." EFTA, 15 U.S.C. 1693a(10); Regulation E, 12 CFR 1005.2(k).

[347] "A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer." EFTA, 15 U.S.C. 1693e(a); Regulation E, 12 CFR 1005.10(c).

[348] *See* NACHA Rule 3.7.1.2, RDFI Obligation to Stop Payment of Single Entries ("An RDFI must honor a stop payment order provided by a Receiver, either verbally or in writing, to the RDFI at such time and in such manner as to allow the RDFI a reasonable opportunity to act upon the order prior to acting on an ARC, BOC, POP, or RCK Entry, or a Single Entry IAT, PPD, TEL, or WEB Entry to a Consumer Account.").

[349] NACHA Rule 3.7.1.1.

[350] NACHA Rule 3.7.1.2.

[351] U.C.C. 4-403.

Although EFTA, the UCC, and NACHA Rules provide consumers with stop payment rights, financial institutions typically charge a fee of approximately $32 for consumers to exercise those rights.[353] Further, both lenders and financial institutions often impose a variety of requirements that make the process for stopping payments confusing and burdensome for consumers. See discussion in Market Concerns—Payments.

Protection from unauthorized payments. Regulation E and NACHA Rules both provide protections with respect to payments by a consumer's financial institution if the electronic transfer is unauthorized.[354] Payments originally authorized by the consumer can become unauthorized under EFTA if the consumer notifies his or her financial institution that the originator's authorization has been revoked.[355] NACHA has a specific threshold for unauthorized returns, which involve transactions that originally collected funds from a consumer's account but that the consumer is disputing as unauthorized. Under NACHA Rules, originators are required to operate with an unauthorized return rate below 0.5 percent or they risk fines and loss of access to the ACH network.[356]

Notice of variable amounts. Regulation E and the NACHA Rules both provide that if the debit amount for a preauthorized transfer changes from the previous transfer or from the preauthorized amount, consumers must receive a notice 10 calendar days prior to the debit.[357] However, both of these rules have an exception from this requirement if consumers have agreed to a range of debit amounts and the payment does not fall outside that range.[358]

Based on outreach and market research, the Bureau does not believe that most payday and payday installment lenders making loans that would be covered under the proposed rule are providing a notice of transfers varying in amount. However, the Bureau is aware that many of these lenders take authorizations for a range of amounts. As a result, lenders use these broad authorizations rather than fall under the Regulation E requirement to send a notice of transfers varying in amount even when collecting for an irregular amount (for example, by adding fees or a past due amount to a regularly-scheduled payment). Some of these contracts provide that the consumer is authorizing the lender to initiate payment for any amount up to the full amount due on the loan.[359]

Reinitiation Cap. After a payment attempt has failed, NACHA Rules allow an originator—in this case, the lender that is trying to collect payment—to attempt to collect that same payment no more than two additional times through the ACH network.[360] NACHA Rules also require the ACH files[361] for the two additional attempts to be labeled as "reinitiated" transactions. Because the rule applies on a per-payment basis, for lenders with recurring payment authorizations, the count resets to zero when the next scheduled payment comes due.

III. Research, Outreach, and Consumer Testing

A. Research and Stakeholder Outreach

The Bureau has undertaken extensive research and conducted broad outreach with a multitude of stakeholders in the years leading up to the release of this Notice of Proposed Rulemaking. All of the input and feedback the Bureau received from this outreach has assisted the Bureau in the development of this notice.

That process began in January 2012 when the Bureau held its first public field hearing in Birmingham, Alabama, focused on small dollar lending. At the field hearing, the Bureau heard testimony and received input from consumers, civil rights groups, consumer advocates, religious leaders, industry and trade association representatives, academics, and elected representatives and other governmental officials about consumers' experiences with small dollar loan products. The Bureau transcribed that field hearing and posted the transcript on its Web site.[362] Concurrently with doing this, the Bureau placed a notice in the **Federal Register** inviting public comment on the issues discussed in the field hearing.[363] The Bureau received 664 public comments in response to that request.

At the Birmingham field hearing, the Bureau announced the launch of a program to conduct supervisory examinations of payday lenders pursuant to the Bureau's authority under Dodd-Frank Act section 1024. As part of the initial set of supervisory exams, the Bureau obtained loan-level records from a number of large payday lenders.

In April 2013 and March 2014, the Bureau issued two research publications reporting on findings by Bureau staff using the supervisory data. In conjunction with the second of these reports, the Bureau held a field hearing in Nashville, Tennessee, to gather further input from consumers, providers, and advocates alike. While the Bureau was working on these reports and in the period following their release, the Bureau held numerous meetings with stakeholders on small dollar lending in general and to hear their views on potential policy approaches.

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[352] U.C.C. 4-403 cmt. 5.

[353] Median stop payment fee for an individual stop payment order charged by the 50 largest financial institutions in 2015 based on information in the Informa Research Database. Informa Research Services, Inc. (Mar. 2016), *www.informars.com.* Although information has been obtained from the various financial institutions, the accuracy cannot be guaranteed.

[354] NACHA Rule 2.3.1, General Rule, Originator Must Obtain Authorization from Receiver.

[355] Electronic Fund Transfer Act, 15 U.S.C. 1693a(12) ("The term 'unauthorized electronic fund transfer' means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized. . . ."). Regulation E implements this provision at 12 CFR 1005.2(m).

[356] NACHA Rule 2.17.2.

[357] 12 CFR 1005.10(d)(1) ("When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer."); NACHA Rule 2.3.2.6(a).

[358] 12 CFR 1005.10(d)(2) ("The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount."); NACHA Rule 2.3.2.6(b).

[359] For example, a 2013 One Click Cash Loan Contract states:

> The range of ACH debit entries will be from the amount applied to finance charge for the payment due on the payment date as detailed in the repayment schedule in your loan agreement to an amount equal to the entire balance due and payable if you default on your loan agreement, plus a return item fee you may owe as explained in your loan agreement. You further authorize us to vary the amount of any ACH debit entry we may initiate to your account as needed to pay the payment due on the payment date as detailed in the repayment schedule in your loan agreement as modified by any prepayment arrangements you may make, any modifications you and we agree to regarding your loan agreement, or to pay any return item fee you may owe as explained in your loan agreement.

Ex. 1 at 38, Labajo v. First International Bank & Trust, No. 14-00627 (C.D. Cal. May 23, 2014), ECF No. 26-3 (SFS Inc, dba One Click Cash, Authorization to Initiate ACH Debit and Credit Entries).

[360] NACHA Rule 2.12.4.

[361] ACH transactions are transferred in a standardized electronic file format between financial institutions and ACH network operators. These files contain information about the payment itself along with routing information for the applicable consumer account, originator (or in this case, the lender) account, and financial institution.

[362] Bureau of Consumer Fin. Prot., *In the Matter of: A Field Hearing on Payday Lending,* Hearing Transcript, Jan. 19, 2012, *available* at *http://files.consumerfinance.gov/f/201201_cfpb_transcript_payday-lending-field-hearing-alabama.pdf.*

[363] 77 FR 16817 (March 22, 2012).

The Bureau has conducted extensive outreach to industry, including national trade associations and member businesses, to gain knowledge of small dollar lending operations, underwriting processes, State laws, and the anticipated regulatory impact of the approaches proposed in the Small Business Review Panel Outline. Industry meetings have included non-depository lenders of different sizes, publicly traded and privately held, that offer single-payment payday loans through storefronts and online, multi-payment payday loans, vehicle title loans, open-end credit, and installment loans. The Bureau's outreach with depository lenders has likewise been extensive and included meetings with retail banks, community banks, and credit unions of varying sizes, both Federally and State-chartered. In addition, the Bureau has held extensive outreach on multiple occasions with the trade associations that represent these lenders. The Bureau's outreach also extended to specialty consumer reporting agencies utilized by some of these lenders. On other occasions, Bureau staff met to hear recommendations on responsible lending practices from a voluntarily-organized roundtable made up of lenders, advocates, and representatives of a specialty consumer reporting agency and a research organization.

As part of the process under the Small Business Regulatory Enforcement and Fairness Act (SBREFA process), which is discussed in more detail below, the Bureau released in March 2015 a summary of the rulemaking proposals under consideration in the Small Business Review Panel Outline. At the same time that the Bureau published the Small Business Review Panel Outline, the Bureau held a field hearing in Richmond, Virginia, to begin the process of gathering feedback on the proposals under consideration from a broad range of stakeholders. Immediately after the Richmond field hearing, the Bureau held separate roundtable discussions with consumer advocates and with industry members and trade associations to hear feedback on the Small Business Review Panel Outline. On other occasions, the Bureau met with members of two trade associations representing storefront payday lenders to discuss their feedback on issues presented in the Small Business Review Panel Outline.

At the Bureau's Consumer Advisory Board meeting in June 2015 in Omaha, Nebraska, a number of meetings and field events were held about payday, vehicle title, and similar loans. The Consumer Advisory Board advises and consults with the Bureau in the exercise of its functions under the Federal consumer financial laws, and provides information on emerging practices in the consumer financial products and services industry, including regional trends, concerns, and other relevant information. The Omaha events included a visit to a payday loan store and a day-long public session that focused on the Bureau's proposals in the Small Business Review Panel Outline and trends in payday and vehicle title lending. The Consumer Advisory Board has convened six other discussions on consumer lending. Two of the Bureau's other advisory bodies also discussed the proposals outlined in the Small Business Review Panel Outline: The Community Bank Advisory Council held two subcommittee discussions in March 2015 and November 2015, and the Credit Union Advisory Council conducted one Council discussion in March 2016 and held two subcommittee discussions in April 2015 and October 2015.

Bureau leaders, including its director, and staff have also spoken at events and conferences throughout the country. These meetings have provided additional opportunities to gather insight and recommendations from both industry and consumer groups about how to formulate a proposed rule. In addition to gathering information from meetings with lenders and trade associations and through regular supervisory and enforcement activities, Bureau staff has made fact-finding visits to at least 12 non-depository payday and vehicle title lenders, including those that offer single-payment and installment loans.

In conducting research, the Bureau has used not only the data obtained from the supervisory examinations previously described but also data obtained through orders issued by the Bureau pursuant to section 1022(c)(4) of the Dodd-Frank Act, data obtained through civil investigative demands made by the Bureau pursuant to section 1052 of the Dodd-Frank Act, and data voluntarily supplied to the Bureau by several lenders. Using these additional data sources, the Bureau in April and May 2016 published two research reports on how online payday lenders use access to consumers' bank accounts to collect loan payments and on consumer usage and default patterns on short-term vehicle title loans.

The Bureau also has engaged in consultation with Indian tribes regarding this rulemaking. The Bureau's Policy for Consultation with Tribal Governments provides that the Bureau "is committed to regular and meaningful consultation and collaboration with tribal officials, leading to meaningful dialogue with Indian tribes on Bureau policies that would be expressly directed to tribal governments or tribal members or that would have direct implications for Indian tribes."[364] To date, the Bureau has held two formal consultation sessions related to this rulemaking. The first was held October 27, 2014, at the National Congress of American Indians 71st Annual Convention and Marketplace in Atlanta, Georgia, prior to the release of the SBREFA materials. At the first consultation session, tribal leaders provided input to the Bureau prior to the drafting of the proposals included in what would become the Small Business Review Panel Outline. A second consultation was held at the Bureau's headquarters on June 15, 2015, so that tribal leaders could respond to the proposals under consideration as set forth in the Small Business Review Panel Outline. All federally recognized tribes were invited to attend these consultations, which included open dialogue in which tribal leaders shared their views with senior Bureau leadership and staff about the potential impact of the rulemaking on tribes. The Bureau expects to engage in additional consultation following the release of the proposed rule, and specifically seeks comment on this Notice of Proposed Rulemaking from tribal governments.

The Bureau's outreach also has included meetings and calls with individual State Attorneys General, State financial regulators, and municipal governments, and with the organizations representing the officials charged with enforcing applicable Federal, State, and local laws. In particular, the Bureau, in developing the proposed registered information system requirements, consulted with State agencies from States that require lenders to provide information about certain covered loans to statewide databases and intends to continue to do so as appropriate.

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[364] Bureau of Consumer Fin. Prot., Consumer Financial Protection Bureau Policy for Consultation with Tribal Governments, at 1, *available at http://files.consumerfinance.gov/f/201304_cfpb_consultations.pdf.*

As discussed in connection with section 1022 of the Dodd-Frank Act below, the Bureau has consulted with other Federal consumer protection and also Federal prudential regulators about these issues. The Bureau has provided other regulators with information about the proposals under consideration, sought their input, and received feedback that has assisted the Bureau in preparing this proposed rule.

In addition to these various forms of outreach, the Bureau's analysis has also been informed by supervisory examinations of a number of payday lenders, enforcement investigations of a number of different types of liquidity lenders, market monitoring activities, three additional research reports drawing on extensive loan-level data, and complaint information. Specifically, the Bureau has received, as of January 1, 2016, 36,200 consumer complaints relating to payday loans and approximately 10,000 more complaints relating to vehicle title and installment loan products that, in some cases, would be covered by the proposed rule.[365] Of the 36,200 payday complaints, approximately 12,200 were identified by the consumer as payday complaints and 24,000 were identified as debt collection complaints related to a payday loan.[366] The Bureau has also carefully reviewed the published literature with respect to small-dollar liquidity loans and a number of outside researchers have presented their research at seminars for Bureau staff.

B. Small Business Review Panel

In April 2015, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the SBA and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[367] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (referred to above as the Small Business Review Panel Outline), which it posted on its Web site for review and comment by the general public as well as the small entities participating in the panel process.[368]

Prior to formally convening, the Panel participated in teleconferences with small groups of the small entity representatives (SERs) to introduce the Small Business Review Panel Outline and to obtain feedback. The Small Business Review Panel gathered information from representatives of 27 small entities, including small payday lenders, vehicle title lenders, installment lenders, banks, and credit unions. The meeting participants represented storefront and online lenders, in addition to State-licensed lenders and lenders affiliated with Indian tribes. The Small Business Review Panel held a full-day meeting on April 29, 2015, to discuss the proposals under consideration. The 27 small entities also were invited to submit written feedback, and 24 of them provided written comments. The Small Business Review Panel made findings and recommendations regarding the potential compliance costs and other impacts of those entities. These findings and recommendations are set forth in the Small Business Review Panel Report, which will be made part of the administrative record in this rulemaking.[369] The Bureau has carefully considered these findings and recommendations in preparing this proposal as detailed below in the section-by-section analysis on various provisions and in parts VI and VII. The Bureau specifically seeks comment on this Notice of Proposed Rulemaking from small businesses.

As discussed above, the Bureau has continued to conduct extensive outreach and engagement with stakeholders on all sides since the SBREFA process concluded.

C. Consumer Testing

In developing this notice, the Bureau engaged a third-party vendor, Fors Marsh Group (FMG), to coordinate qualitative consumer testing for disclosures under consideration in this rulemaking. The Bureau developed several prototype disclosure forms to test with participants in one-on-one interviews. Three categories of forms were developed and tested: (1) Origination disclosures that informed consumers about limitations on their ability to receive additional short-term loans; (2) upcoming payment notices that alerted consumers about lenders' future attempts to withdraw money from consumers' accounts; and (3) expired authorization notices that alerted consumers that lenders would no longer be able to attempt to withdraw money from the consumers' accounts. Observations and feedback from the testing were incorporated into the model forms proposed by the Bureau.

Through this testing, the Bureau sought to observe how consumers would interact with and understand prototype forms developed by the Bureau. In late 2015, FMG facilitated two rounds of one-on-one interviews. Each interview lasted 60 minutes and included fourteen participants. The first round was conducted in September 2015 in New Orleans, Louisiana, and the second round was conducted in October 2015 in Kansas City, Missouri. In conjunction with the release of this notice, the Bureau is making available a report prepared by FMG on the consumer testing ("FMG Report").[370] The testing and focus groups were conducted in accordance with OMB Control Number 3170-0022.

A total of 28 individuals participated in the interviews. Of these 28 participants, 20 self-identified as having used a small dollar loan within the past two years.

Highlights from individual interview findings. FMG asked participants questions to assess how well they understood the information on the forms.

For the origination forms, the questions focused on whether participants understood that their ability to rollover this loan or take out additional loans may be limited. Each participant reviewed one of two different prototype forms: either one for loans that would require an ability-to-repay determination (ATR Form) or one for loans that would be offered under the conditional exemption for covered short-term loans (Alternative Loan Form). During Round 1, many participants for both form types recognized and valued information about the loan amount and due date; accordingly, that information was moved to the beginning of all the origination forms for Round 2. For the ATR Forms, few participants in Round 1 understood that the "30 days" language was describing a period when future borrowing may be restricted. Instead, several read the language as describing the loan term. In contrast, nearly all participants reviewing the Alternative Loan Form understood that it was attempting to convey that each successive loan they took out after the first in this series had to be smaller than the previous loan, and that after taking out three loans they would not be able to take out another for 30 days. Some participants also reviewed a version of this Alternative Loan Form for when consumers are taking out their third loan in a sequence. The majority of participants who viewed this notice understood it, acknowledging that they would have to wait until 30 days after the third loan was paid off to be considered for another similar loan.

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[365] The Bureau has received nearly 9,700 complaints on installment loans and nearly 500 complaints on vehicle title loans.

[366] The Bureau has taken a phased approach to accepting complaints from consumers. The Bureau began accepting installment loan complaints in March of 2012, payday loan complaints in November of 2013, and vehicle title loan complaints in July of 2014.

[367] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. See Public Law 104-121, tit. II, 110 Stat. 847, 857 (1996) as amended by Public Law 110-28, sec. 8302 (2007), and Public Law 111-203, sec. 1100G (2010).

[368] Bureau of Consumer Fin. Prot., *Small Business Advisory Review Panel for Potential Rulemakings for Payday, Vehicle Title, And Similar Loans: Outline of Proposals under Consideration and Alternatives Considered,* (Mar. 26, 2015) *available at http://files.consumerfinance.gov/f/201503_cfpb_outline-of-the-proposals-from-small-business-review-panel.pdf.*

[369] Bureau of Consumer Fin Prot., U.S. Small Bus. Admin., & Office of Mgmt. & Budget, *Final Report of the Small Business Review Panel on CFPB's Rulemaking on Payday, Vehicle Title, and Similar Loans* (June 25, 2015) (hereinafter Small Business Review Panel Report), *available at http://files.consumerfinance.gov/f/documents/3a_-_SBREFA_Panel_-_CFPB_Payday_Rulemaking_-_Report.pdf.*

[370] For a detailed discussion of the Bureau's consumer testing, see Fors Marsh Group, *Qualitative Testing of Small Dollar Loan Disclosures,* Prepared for the Consumer Financial Protection Bureau (April 2016) (hereinafter FMG Report), *available at http://files.consumerfinance.gov/f/documents/Disclosure_Testing_Report.pdf.*

During Round 2, participants reviewed two new versions of the ATR Form. One adjusted the "30 days" phrasing and the other completely removed the "30 days" language, replacing it with the phrase "shortly after this one." The Alternative Loan Form was updated with similar rephrasing of the "30 days" language. To simplify the table, the "loan date" column was removed.

The results in Round 2 were similar to Round 1. Participants reviewing the ATR forms focused on the language notifying them they should not take out this loan if they're unable to pay the full balance by the due date. Information about restrictions on future loans went largely unnoticed. The edits appeared to positively impact comprehension since no participants interpreted either form as providing information on their loan term. There did not seem to be a difference in comprehension between the group with the "30 days" version and the group with the "shortly" version. As in Round 1, participants who reviewed the Alternative Loan Form noticed and understood the schedule detailing maximum borrowable amounts. These participants understood that the purpose of the Alternative Loan Form was to inform them that any subsequent loans must be smaller.

Questions for the payment notices focused on participants' ability to identify and understand information about the upcoming payment. Participants reviewed one of two payment notices: an Upcoming Withdrawal Notice or an Unusual Withdrawal Notice. Both forms provided details about the upcoming payment attempt and a payment breakdown table. The Unusual Withdrawal Notice also indicated that the withdrawal was unusual because the payment was higher than the previous withdrawal amount. To obtain feedback on participants' likelihood to open notices delivered in an electronic manner, these notices were presented as a sequence to simulate an email message.

In Round 1, all participants, based on seeing the subject line in the email inbox, said that they would open the Upcoming Withdrawal email and read it. Nearly all participants said they would consider the email legitimate. They reported having no concerns about the email because they would have recognized the company name, and because it included details specific to their account along with the lender contact information. When shown the full Upcoming Withdrawal Notice, participants understood that the lender would be withdrawing $40 from their account on a particular date. Several participants also pointed out that the notice described an interest-only payment. Round 1 results were similar for the Unusual Withdrawal Notice; all participants who viewed this notice said they would open the email, and all but one participant—who was deterred due to concerns with the appearance of the link's URL—would click on the link leading to additional details. The majority of participants indicated that they would want to read the email right away, because the words "alert" and "unusual" would catch their attention, and would make them want to determine what was going on and why a different amount was being withdrawn.

For Round 2, the payment amount was increased because some participants found it too low and would not directly answer questions about what they would do if they could not afford payment. The payment breakdown tables were also adjusted to address feedback about distinguishing between principal, finance charges, and loan balance. The results for both the Upcoming Payment and Unusual Payment Notices were similar to Round 1 in that the majority of participants would open the email, thought it was legitimate and from the lender, and understood the purpose.

For the consumer rights notice (referred to an "expired authorization notice" in the report), FMG asked questions about participant reactions to the notice, participant understanding of why the notice was being sent, and what participants might do in response to the notice information. As with the payment notices, these notices were presented as a sequence to simulate an email message.

In Round 1, participants generally understood that the lender had tried twice to withdraw money from their account and would not be able to make any additional attempts to withdraw payment. Most participants expressed disappointment with themselves for being in a position where they had two failed payments and interpreted the notice to be a reprimand from the lender.

For Round 2, the notice was edited to clarify that the lender was prohibited by Federal law from making additional withdrawals. For example, the email subject line was changed from "Willow Lending can no longer withdraw loan payments from your account" to "Willow Lending is no longer permitted to withdraw loan payments from your account." Instead of simply saying "federal law prohibits us from trying to withdraw payment again," language was added to both the email message and the full notice saying, "In order to protect your account, federal law prohibits us from trying to withdraw payment again." More information about consumer rights and the CFPB was also added. Some participants in Round 2 still reacted negatively to this notice and viewed it as reflective of something they did wrong. However, several reacted more positively to this prototype and viewed the notice as protection.

To obtain feedback regarding consumer preferences on receiving notices through text message, participants were also presented with an image of a text of the consumer rights notice and asked how they would feel about getting this notice by text. Overall, the majority of participants in Round 1 (8 of 13) disliked the idea of receiving notices via text. One of the main concerns was privacy; many mentioned that they would be embarrassed if a text about their loan situation displayed on their phone screen while they were in a social setting. In Round 2, the text image was updated to match the new subject line of the consumer rights notice. The majority (10 of the 14) of participants had a negative reaction to the notification delivered via text message. Despite this, the majority of participants said that they would still open the text message and view the link.

Most participants (25 out of 28) also listened to a mock voice message of a lender contacting the participant to obtain renewed payment authorization after two payment attempts had failed. In Round 1, most participants reported feeling somewhat intimidated by the voicemail message and were inclined to reauthorize payments or call back based on what they heard. Participants had a similar reaction to the voicemail message in Round 2.

IV. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under the Dodd-Frank Act. The proposed rule relies on rulemaking and other authorities specifically granted to the Bureau by the Dodd-Frank Act, as discussed below.

A. Section 1031 of the Dodd-Frank Act

Section 1031(b)—The Bureau's Authority To Identify and Prevent UDAAPs

Section 1031(b) of the Dodd-Frank Act provides the Bureau with authority to prescribe rules to identify and prevent unfair, deceptive, and abusive acts or practices, or UDAAPs. Specifically, Dodd-Frank Act section 1031(b) authorizes the Bureau to prescribe rules "applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service." Section 1031(b) of the Dodd-Frank Act further provides that, "Rules under this section may include requirements for the purpose of preventing such acts or practice."

Given similarities between the Dodd-Frank Act and the Federal Trade Commission Act (FTC Act) provisions relating to unfair and deceptive acts or practices, case law and Federal agency rulemakings relying on the FTC Act provisions inform the scope and meaning of the Bureau's rulemaking authority with respect to unfair and deceptive acts or practices under section 1031(b) of the Dodd-Frank Act.[371] Courts evaluating exercise of agency rulemaking authority under the FTC Act unfairness and deception standards have held that there must be a "reasonable relation" between the act or practice identified as unlawful and the remedy chosen by the agency.[372] The Bureau agrees with this approach and therefore believes that it is reasonable to interpret Dodd-Frank Act section 1031(b) to permit the imposition of requirements to prevent acts or practices that are identified by the Bureau as unfair or deceptive so long as the preventive requirements being imposed by the Bureau have a reasonable relation to the identified acts or practices. The Bureau likewise believes it is reasonable to interpret Dodd-Frank Act section 1031(b) to provide the same degree of discretion to the Bureau with respect to the imposition of requirements to prevent acts or practices that are identified by the Bureau as abusive. Throughout this proposal, the Bureau has relied on and applied this interpretation in proposing requirements to prevent acts or practices identified as unfair or abusive.

Section 1031(c)—Unfair Acts or Practices

Section 1031(c)(1) of the Dodd-Frank Act provides that the Bureau "shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair," unless the Bureau "has a reasonable basis" to conclude that: "(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition."[373] Section 1031(c)(2) of the Dodd-Frank Act provides that, "In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination."[374]

The unfairness standard under section 1031(c) of the Dodd-Frank Act—requiring primary consideration of the three elements of substantial injury, not reasonably avoidable by consumers, and countervailing benefits to consumers or to competition, and permitting secondary consideration of public policy—reflects the unfairness standard under the FTC Act.[375] Section 5(n) of the FTC Act was amended in 1994 to incorporate the principles set forth in the FTC's December 17, 1980 "Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction" (the FTC Policy Statement on Unfairness).[376] The FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings,[377] and related case law inform the scope and meaning of the Bureau's authority under Dodd-Frank Act section 1031(b) to issue rules that identify and prevent acts or practices that the Bureau determines are unfair pursuant to Dodd-Frank Act section 1031(c).

Substantial Injury

The first element for a determination of unfairness under section 1031(c)(1) of the Dodd-Frank Act is that the act or practice causes or is likely to cause substantial injury to consumers. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings, and related case law inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). The FTC noted in the FTC Policy Statement on Unfairness that substantial injury ordinarily involves monetary harm.[378] The FTC has stated that trivial or speculative harms are not cognizable under the test for substantial injury.[379] The FTC also noted that an injury is "sufficiently substantial" if it consists of a small amount of harm to a large number of individuals or if it raises a significant risk of harm.[380] The FTC has found that substantial injury also may involve a large amount of harm experienced by a small number of individuals.[381] The FTC has said that emotional impact and other more subjective types of harm ordinarily will not constitute substantial injury,[382] but the D.C. Circuit held that psychological harm can form part of the substantial injury along with financial harm.[383]

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[371] Section 18 of the FTC Act similarly authorizes the FTC to prescribe "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce" and provides that such rules "may include requirements prescribed for the purpose of preventing such acts or practices." 15 U.S.C. 57a(a)(1)(B). As discussed below, the Dodd-Frank Act, unlike the FTC Act, also permits the Bureau to prescribe rules identifying and preventing "abusive" acts or practices.

[372] *See Am. Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 988 (D.C. Cir. 1985) (*AFSA*) (holding that the FTC "has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist" (citing *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608, 612-13 (1946)).

[373] 12 U.S.C. 5531(c)(1).

[374] 12 U.S.C. 5531(c)(2).

[375] Section 5(n) of the FTC Act, as amended in 1994, provides that, "The [FTC] shall have no authority . . . to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the [FTC] may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." 15 U.S.C. 45(n).

[376] Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (December 17, 1980), *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, 1070 (1984) (*Int'l Harvester*). *See also* S. Rept. 103-130, at 12-13 (1993) (legislative history to FTC Act amendments indicating congressional intent to codify the principles of the FTC Policy Statement on Unfairness).

[377] In addition to the FTC's rulemakings under unfairness authority, certain Federal prudential regulators have prescribed rules prohibiting unfair practices under section 18(f)(1) of the FTC Act and, in doing so, they applied the statutory elements consistent with the standards articulated by the FTC. The Federal Reserve Board, FDIC, and the OCC also issued guidance generally adopting these standards for purposes of enforcing the FTC Act's prohibition on unfair and deceptive acts or practices. *See* 74 FR 5498, 5502 (Jan. 29, 2009) (background discussion of legal authority for interagency Subprime Credit Card Practices rule).

Not Reasonably Avoidable

The second element for a determination of unfairness under section 1031(c)(1) of the Dodd-Frank Act is that the substantial injury is not reasonably avoidable by consumers. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings, and related case law inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). The FTC has provided that knowing the steps for avoiding injury is not enough for the injury to be reasonably avoidable; rather, the consumer must also understand and appreciate the necessity of taking those steps.[384] As the FTC explained in the FTC's Policy Statement on Unfairness, most unfairness matters are brought to "halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking." [385] The D.C. Circuit has noted that where such behavior exists, there is a "market failure" and the agency "may be required to take corrective action." [386] Reasonable avoidability also takes into account the costs of making a choice other than the one made and the availability of alternatives in the marketplace.[387]

Countervailing Benefits to Consumers or Competition

The third element for a determination of unfairness under section 1031(c)(1) of the Dodd-Frank Act is that the act or practice's countervailing benefits to consumers or to competition do not outweigh the substantial consumer injury. As discussed above, the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings, and related case law inform the meaning of the elements of the unfairness standard under Dodd-Frank Act section 1031(c)(1). In applying the FTC Act's unfairness standard, the FTC has stated that generally it is important to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice.[388] Authorities addressing the FTC Act's unfairness standard indicate that the countervailing benefits test does not require a precise quantitative analysis of benefits and costs, as such an analysis may be unnecessary or, in some cases, impossible; rather, the agency is expected to gather and consider reasonably available evidence.[389]

Public Policy

As noted above, section 1031(c)(2) of the Dodd-Frank Act provides that, "In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination." [390]

Section 1031(d)—Abusive Acts or Practices

The Dodd-Frank Act, in section 1031(b), authorizes the Bureau to identify and prevent abusive acts and practices. The Bureau believes that Congress intended for the statutory phrase "abusive acts or practices" to encompass conduct by covered persons that is beyond what would be prohibited as unfair or deceptive acts or practices, although such conduct could overlap and thus satisfy the elements for more than one of the standards.[391]

Under Dodd-Frank Act section 1031(d), the Bureau "shall have no authority . . . to declare an act or practice abusive in connection with the provision of a consumer financial product or service'' unless the act or practice qualifies under at least one of several enumerated conditions. For example, under Dodd-Frank Act section 1031(d)(2)(A), an act or practice might ''take[] unreasonable advantage of'' a consumer's ''lack of understanding . . . of the material risks, costs, or conditions of the [consumer financial] product or service'' (*i.e.*, the lack of understanding prong).[392] Under Dodd-Frank Act section 1031(d)(2)(B), an act or practice might ''take[] unreasonable advantage of'' the ''inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service'' (*i.e.*, the inability to protect prong).[393] The Dodd-Frank Act does not further elaborate on the meaning of these terms. Rather, the statute left it to the Bureau to interpret and apply these standards.

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[378] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1073. For example, in the Higher-Priced Mortgage Loan (HPML) Rule, the Federal Reserve Board concluded that a borrower who cannot afford to make the loan payments as well as payments for property taxes and homeowners insurance because the lender did not adequately assess the borrower's repayment ability suffers substantial injury, due to the various costs associated with missing mortgage payments (*e.g.,* large late fees, impairment of credit records, foreclosure related costs). *See* 73 FR 44522, 44541-42 (July 30, 2008).

[379] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1073.

[380] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1073 n.12.

[381] *See Int'l Harvester,* 104 F.T.C. at 1064.

[382] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1073.

[383] *See AFSA,* 767 F.2d at 973-74, n.20 (discussing the potential psychological harm resulting from lenders' taking of non-possessory security interests in household goods and associated threats of seizure, which was part of the FTC's rationale for intervention in the Credit Practices Rule).

[384] *See Int'l Harvester,* 104 F.T.C. at 1066.

[385] FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1074.

[386] *AFSA,* 767 F.2d at 976. The D.C. Circuit noted that Congress intended for the FTC to develop and refine the criteria for unfairness on a "progressive, incremental" basis. *Id.* at 978. The court upheld the FTC's Credit Practices Rule by reasoning in part that "the fact that the [FTC's] analysis applies predominantly to certain creditors dealing with a certain class of consumers (lower-income, higher-risk borrowers) does not, as the dissent suggests, undercut its validity. [There is] a market failure with respect to a particular category of credit transactions which is being exploited by the creditors involved to the detriment of the consumers involved." *Id.* at 982 n. 29.

[387] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1074 n. 19 ("In some senses any injury can be avoided—for example, by hiring independent experts to test all products in advance, or by private legal actions for damages—but these courses may be too expensive to be practicable for individual consumers to pursue."); *AFSA,* 767 F.2d at 976-77 (reasoning that because of factors such as substantial similarity of contracts, "consumers have little ability or incentive to shop for a better contract").

[388] *See* FTC Policy Statement on Unfairness, *Int'l Harvester,* 104 F.T.C. at 1073-74 (noting that an unfair practice must be "injurious in its net effects" and that "[t]he Commission also takes account of the various costs that a remedy would entail. These include not only the costs to the parties directly before the agency, but also the burdens on society in general in the form of increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and similar matters.").

[389] *See* S. Rept. 103-130, at 13 (1994) (legislative history for the 1994 amendments to the FTC Act noting that, "In determining whether a substantial consumer injury is outweighed by the countervailing benefits of a practice, the Committee does not intend that the FTC quantify the detrimental and beneficial effects of the practice in every case. In many instances, such a numerical benefit-cost analysis would be unnecessary; in other cases, it may be impossible. This section would require, however, that the FTC carefully evaluate the benefits and costs of each exercise of its unfairness authority, gathering and considering reasonably available evidence."); *Pennsylvania Funeral Directors Ass'n, Inc.* v. *FTC,* 41 F.3d 81, 91 (3d Cir. 1994) (in upholding the FTC's amendments to the Funeral Industry Practices Rule, the Third Circuit noted that "much of a cost-benefit analysis requires predictions and speculation"); *Int'l Harvester,* 104 F.T.C. at 1065 n. 59 ("In making these calculations we do not strive for an unrealistic degree of precision. . . . We assess the matter in a more general way, giving consumers the benefit of the doubt in close issues. . . . What t is important . . . is that we retain an overall sense of the relationship between costs and benefits. We would not want to impose compliance costs of millions of dollars in order to prevent a bruised elbow.").

[390] 12 U.S.C. 5531(c)(2).

[391] *See, e.g.,* S. Rep. No. 111-176, at 172 (Apr. 30, 2010) ("Current law prohibits unfair or deceptive acts or practices. The addition of 'abusive' will ensure that the Bureau is empowered to cover practices where providers unreasonably take advantage of consumers."); Public Law 111-203, pmbl. (listing, in the preamble to the Dodd-Frank Act, one of the purposes of the Act as "protect[ing] consumers from abusive financial services practices").

Although the legislative history on the meaning of the Dodd-Frank Act abusiveness standard is fairly limited, it suggests that Congress was particularly concerned about the widespread practice of lenders making unaffordable loans to consumers. A primary focus was on unaffordable home mortgages.[394] However, there is some indication that Congress intended the Bureau to use the authority under Dodd-Frank Act section 1031(d) to address payday lending through the Bureau's rulemaking, supervisory, and enforcement authorities. For example, the Senate Committee on Banking, Housing, and Urban Affairs report on the Senate version of the legislation listed payday loans as one of several categories of consumer financial products and services other than mortgages where ''consumers have long faced problems'' because they lack ''adequate federal rules and enforcement,'' noting further that ''[a]busive lending, high and hidden fees, unfair and deceptive practices, confusing disclosures, and other anti-consumer practices have been a widespread feature in commonly available consumer financial products such as credit cards.'' [395] The same section of the Senate committee report included a description of the basic features of payday loans and the problems associated with them, specifically noting that many consumers are unable to repay the loans while meeting their other obligations and that many borrowers reborrow which results in a ''perpetual debt treadmill.'' [396]

B. Section 1032 of the Dodd-Frank Act

Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, ''both initially and over the term of the product or service,'' are ''fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' [397] The authority granted to the Bureau in section 1032(a) of the Dodd-Frank Act is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' [398]

Dodd-Frank Act section 1032(b)(1) provides that ''any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' [399] Dodd-Frank Act section 1032(b)(2) provides that such model form ''shall contain a clear and conspicuous disclosure that, at a minimum—(A) uses plain language comprehensible to consumers; (B) contains a clear format and design, such as an easily readable type font; and (C) succinctly explains the information that must be communicated to the consumer.'' [400] Dodd-Frank Act section 1032(b)(3) provides that any such model form ''shall be validated through consumer testing.'' [401] Dodd-Frank Act section 1032(d) provides that, ''Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.'' [402]

C. Other Authorities Under the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act provides that the Bureau's director ''may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [403] ''Federal consumer financial law'' includes rules prescribed under Title X of the Dodd-Frank Act,[404] including sections 1031(b) through (d) and 1032.

Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1) of the Dodd-Frank Act.[405] See part VI below for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau to, by rule, ''conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services'' from any provision of Title X or from any rule issued under Title X as the Bureau determines ''necessary or appropriate to carry out the purposes and objectives'' of Title X, ''taking into consideration the factors'' set forth in section 1022(b)(3)(B) of the Dodd-Frank Act.[406] Section 1022(b)(3)(B) of the Dodd-Frank Act specifies three factors that the

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[392] 12 U.S.C. 5531(d)(2)(A).

[393] 12 U.S.C. 5531(d)(2)(B). The Dodd-Frank Act abusiveness standard also permits the Bureau to intervene under section 1031(d)(1) if the Bureau determines that an act or practice ''materially interferes with a consumer's ability to understand a term or condition of a consumer financial product or service,'' 12 U.S.C. 5531(d)(1), and under section 1031(d)(2)(C) if an act or practice ''takes unreasonable advantage of'' the consumer's ''reasonable reliance'' on the covered person to act in the consumer's interests, 12 U.S.C. 5531(d)(2)(C).

[394] While Congress sometimes described other products as abusive, it frequently applied the term to unaffordable mortgages. *See, e.g.*, S. Rept. No. 111-176, at 11 (noting that the ''financial crisis was precipitated by the proliferation of poorly underwritten mortgages with abusive terms'').

[395] *See* S. Rept. 111-176, at 17. In addition to credit cards, the Senate committee report listed overdraft, debt collection, payday loans, and auto dealer lending as the consumer financial products and services warranting concern. *Id.* at 17-23.

[396] *Id.* at 20-21. *See also* 155 Cong. Rec. 31250 (Dec. 10, 2009) (during a colloquy on the House floor with the one of the authors of the Dodd-Frank Act, Representative Barney Frank, Representative Henry Waxman stated that ''authority to pursue abusive practices helps ensure that the agency can address payday lending and other practices that can result in pyramiding debt for low income families.'').

[397] 12 U.S.C. 5532(a).

[398] 12 U.S.C. 5532(c).

[399] 12 U.S.C. 5532(b)(1).

[400] 12 U.S.C. 5532(b)(2).

[401] 12 U.S.C. 5532(b)(3).

[402] 12 U.S.C. 5532(d).

[403] 12 U.S.C. 5512(b)(1).

[404] 12 U.S.C. 5481(14).

[405] 12 U.S.C. 5512(b)(2).

[406] 12 U.S.C. 5512(b)(3)(A).

Bureau shall, as appropriate, take into consideration in issuing such an exemption.[407]

Proposed §§ 1041.16 and 1041.17 would also be authorized by additional Dodd-Frank Act authorities, such as Dodd-Frank Act sections 1021(c)(3),[408] 1022(c)(7),[409] 1024(b)(1),[410] and 1024(b)(7).[411] Additional description of the Dodd-Frank Act authorities on which the Bureau is relying for proposed §§ 1041.16 and 1041.17 is contained in the section-by-section analysis of proposed §§ 1041.16 and 1041.17.

D. Section 1041 of the Dodd-Frank Act

Section 1041(a)(1) of the Dodd-Frank Act provides that Title X of the Dodd-Frank Act, other than sections 1044 through 1048, "may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of [Title X] from complying with," the statutes, regulations, orders, or interpretations in effect in any State (sometimes hereinafter, State laws), "except to the extent that any such provision of law is inconsistent with the provisions of [Title X], and then only to the extent of the inconsistency."[412] Section 1041(a)(2) of the Dodd-Frank Act provides that, for purposes of section 1041, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the Title X provisions "if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided" under Title X.[413] Section 1041(a)(2) further provides that, "A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of [Title X] may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person."

The requirements of the proposed rule would set minimum standards at the Federal level for regulation of covered loans. The Bureau believes that the requirements of the proposed rule would coexist with State laws that pertain to the making of loans that the proposed rule would treat as covered loans (hereinafter, applicable State laws). Consequently, any person subject to the proposed rule would be required to comply with both the requirements of the proposed rule and applicable State laws, except to the extent the applicable State laws are inconsistent with the requirements of the proposed rule.[414] This is consistent with the established framework of Federal and State laws in many other substantive areas, such as securities law, antitrust law, environmental law and the like.

As noted above, Dodd-Frank Act section 1041(a)(2) provides that State laws that afford greater consumer protections than provisions under Title X are not inconsistent with the provisions under Title X. As discussed in part II, different States have taken different approaches to regulating loans that would be covered loans, with some States electing to permit the making of such loans and other States choosing not to do so. The Bureau believes that the requirements of the proposed rule would coexist with these different approaches, which are reflected in applicable State laws.[415] The Bureau is aware of certain applicable State laws that the Bureau believes would afford greater protections to consumers than would the requirements of the proposed rule. For example, as described in part II, certain States have fee or interest rate caps (*i.e.,* usury limits) that payday lenders apparently find too low to sustain their business models. The Bureau believes that the fee and interest rate caps in these States would provide greater consumer protections than, and would not be inconsistent with, the requirements of the proposed rule.

V. Section-by-Section Analysis

Subpart A—General

Section 1041.1 Authority and Purpose

Proposed § 1041.1 provides that the rule is issued pursuant to Title X of the Dodd-Frank Act (12 U.S.C. 5481, *et seq.*). It also provides that the purpose of proposed part 1041 (also referred to as "this part" or "this proposed part") is to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions and to set forth requirements for preventing such acts or practices and to prescribe requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers. It also notes the proposed part also prescribes processes and criteria for registration of information systems.

Section 1041.2 Definitions

Proposed § 1041.2 contains definitions of terms that are used across a number of sections in this rule. There are additional definitions in proposed §§ 1041.3, 1041.5, 1041.9, 1041.14, and 1041.17 of terms used in those respective individual sections.

In general, the Bureau is proposing to incorporate a number of defined terms under other statutes or regulations and related commentary, particularly Regulation Z and Regulation E as they implement TILA and EFTA, respectively. The Bureau believes that basing this proposal's definitions on previously defined terms may minimize regulatory uncertainty and facilitate compliance, particularly where the other regulations are likely to apply to the same transactions in their own right. However, as discussed further below, the Bureau is in certain definitions proposing to expand or modify the existing definitions or the concepts enshrined in such definitions for purposes of this proposal to ensure that the rule has its intended scope of effect particularly as industry practices may evolve. As reflected below with regard to individual definitions, the Bureau solicits comment on the appropriateness of this general approach and whether alternative definitions in statute or regulation would be more useful for these purposes.

2(a) Definitions

2(a)(1) Account

Proposed § 1041.2(a)(1) would define account by cross-referencing the same term as defined in Regulation E, 12 CFR part 1005. Regulation E generally defines account to include demand deposit (checking), savings, or other consumer asset accounts (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.[416] The term account is used in proposed § 1041.3(c), which would provide that a loan is a covered loan if, among other requirements, the lender or service provider obtains repayment directly from a consumer's account. This term is also used in proposed § 1041.14, which would impose certain requirements when a lender seeks to obtain repayment for a covered loan directly from a consumer's account, and in proposed § 1041.15, which would require lenders to provide notices to consumers before attempting to withdraw payments from consumers' accounts. The Bureau believes that defining this term consistently with an existing regulation would reduce the risk of confusion among consumers, industry, and regulators. The Bureau believes the Regulation E definition is appropriate because that definition is broad enough to capture the types of transactions that may implicate the concerns addressed by this part. The Bureau solicits comment on whether the Regulation E definition of account is appropriate in the context of this part and whether any additional guidance on the definition is needed.

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[407] 12 U.S.C. 5512(b)(3)(B) ("(B) Factors.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—(i) the total assets of the class of covered persons; (ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and (iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.").

[408] 12 U.S.C. 5511(c)(3).

[409] 12 U.S.C. 5512(c)(7).

[410] 12 U.S.C. 5514(b)(1).

[411] 12 U.S.C. 5514(b)(7).

[412] 12 U.S.C. 5551(a)(1). Dodd-Frank Act section 1002(27) defines "State" to include any federally recognized Indian tribe. *See* 12 U.S.C. 5481(27).

[413] 12 U.S.C. 5551(a)(2).

[414] The Bureau also believes that the requirements of the proposed rule would coexist with applicable laws in cities and other localities, and the Bureau does not intend for the proposed rule to annul, alter, or affect, or exempt any person from complying with, the regulatory frameworks of cities and other localities to the extent those frameworks provide greater consumer protections or are otherwise not inconsistent with the requirements of the proposed rule.

[415] States have expressed concern that the identification of unfair and abusive acts or practices in this rulemaking may be construed to affect or limit provisions in State statutes or State case law. The Bureau is proposing to identify unfair and abusive acts or practices under the statutory definitions in sections 1031(c) and 1031(d) of the Dodd-Frank Act. This proposal and any rule that may be finalized are not intended to limit the further development of State laws protecting consumers from unfair or deceptive acts or practices as defined under State laws, or from similar conduct prohibited by State laws.

2(a)(2) Affiliate

Proposed § 1041.2(a)(2) would define affiliate by cross-referencing the same term as defined in the Dodd-Frank Act, 12 U.S.C. 5481(1). The Dodd-Frank Act defines affiliate as any person that controls, is controlled by, or is under common control with another person. Proposed §§ 1041.6 and 1041.10 would impose certain limitations on lenders making loans to consumers who have outstanding covered loans with an affiliate of the lender. The section-by-section analyses of proposed §§ 1041.6 and 1041.10 discuss in more detail the particular requirements related to affiliates.

The Bureau believes that defining this term consistently with the Dodd-Frank Act would reduce the risk of confusion among consumers, industry, and regulators. The Bureau solicits comment on whether the Dodd-Frank Act definition of affiliate is appropriate in the context of this part and whether any additional guidance on the definition is needed.

2(a)(3) Closed-End Credit

Proposed § 1041.2(a)(3) would define closed-end credit as an extension of credit to a consumer that is not open-end credit under proposed § 1041.2(a)(14). This term is used in various parts of the rule where the Bureau is proposing to tailor provisions specifically for closed-end and open-end credit in light of their different structures and durations. Most notably, proposed § 1041.2(a)(18) would prescribe slightly different methods of calculating the total cost of credit of closed-end and open-end credit. Proposed § 1041.16(c) also would require lenders to report whether a covered loan is closed-end or open-end credit to registered information systems. The Bureau solicits comment on whether this definition of closed-end credit is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(4) Consumer

Proposed § 1041.2(a)(4) would define consumer by cross-referencing the same term as defined in in the Dodd-Frank Act, 12 U.S.C. 5481(4). The Dodd-Frank Act defines consumer as an individual or an agent, trustee, or representative acting on behalf of an individual. The term is used in numerous provisions across proposed part 1041to refer to applicants for and borrowers of covered loans.

The Bureau believes that this definition, rather than the arguably narrower Regulation Z definition of consumer—which defines consumer as "a cardholder or natural person to whom consumer credit is offered or extended"—is appropriate to capture the types of transactions that may implicate the concerns addressed by this proposal. In particular, the Dodd-Frank Act definition expressly defines the term consumer to include agents and representatives of individuals rather than just individuals themselves. The Bureau believes that this definition may more comprehensively foreclose possible evasion of the specific consumer protections imposed by proposed part 1041 than would the Regulation Z definition. The Bureau solicits comment on whether the Dodd-Frank Act definition of consumer is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(5) Consummation

Proposed § 1041.2(a)(5) would define consummation as the time a consumer becomes contractually obligated on a new loan, which is consistent with the definition of the term in Regulation Z § 1026.2(a)(13), or the time a consumer becomes contractually obligated on a modification of an existing loan that increases the amount of the loan. The term is used both in defining certain categories of covered loans and in defining the timing of certain proposed requirements. The time of consummation is important for the purposes of several proposed provisions. For example, under proposed § 1041.3(b)(1), whether a loan is a covered short-term loan would depend on whether the consumer is required to repay substantially all of the loan within 45 days of consummation. Under proposed § 1041.3(b)(3), the determination of whether a loan is subject to a total cost of credit exceeding 36 percent per annum would be made at the time of consummation. Pursuant to proposed §§ 1041.6 and 1041.10, certain limitations would potentially apply to lenders making covered loans based on the consummation dates of those loans. Pursuant to § 1041.15(f), lenders would have to furnish certain disclosures before a loan subject to the requirements of that section is consummated.

The Bureau believes that defining the term consistently with Regulation Z with respect to new loans would reduce the risk of confusion among consumers, industry, and regulators. The Bureau believes it is also necessary to define the term, with respect to loan modifications, in a way that would further the intent of proposed §§ 1041.3(b)(1), 1041.3(b)(2), 1041.5(b), and 1041.9(b), all of which would impose requirements on lenders at the time the loan amount increases. The Bureau believes defining these events as consummations would improve clarity for consumers, industry, and regulators. The above-referenced sections would impose no duties or limitations on lenders when a loan modification decreases the amount of the loan. Accordingly, in addition to incorporating Regulation Z commentary as to the general definition of consummation for new loans, proposed comment 2(a)(5)-2 explains the time at which certain modifications of existing loans are consummated. Proposed comment 2(a)(5)-2 explains that a modification is consummated if the modification increases the amount of the loan. Proposed comment 2(a)(5)-2 also explains that a cost-free repayment plan, or "off-ramp" as it is commonly known in the market, does not result in a consummation under proposed § 1041.2(a)(5). The Bureau solicits comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

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[416] Regulation E also specifically includes payroll card accounts and certain government benefit card accounts. The Bureau has proposed in a separate rulemaking to enumerate rules for a broader category of prepaid accounts. *See* 79 FR 77101 (Dec. 23, 2014).

The Bureau considered expressly defining the term "new loan" in order to clarify when lenders would need to make the ability-to-repay determinations prescribed in proposed §§ 1041.5 and 1041.9. The definition that the Bureau considered would have defined a new loan as a consumer-purpose loan made to a consumer that (a) is made to a consumer who is not indebted on an outstanding loan, (b) replaces an outstanding loan, or (c) modifies an outstanding loan, except when a repayment plan, or "off-ramp" extends the term of the loan and imposes no additional fees. The Bureau solicits comment on whether this approach would provide additional clarification, and if so, whether this particular definition of "new loan" would be appropriate.

2(a)(6) Covered Short-Term Loan

Proposed § 1041.3(b)(1) would describe covered short-term loans as loans in which the consumer is required to repay substantially the entire amount due under the loan within 45 days of consummation. Some provisions in proposed part 1041 would apply only to covered short-term loans described in proposed § 1041.3(b)(1). For example, proposed § 1041.5 prescribes the ability-to-repay determination that lenders are required to perform when making covered short-term loans. Proposed § 1041.6 imposes limitations on lenders making sequential covered short-term loans to consumers. The Bureau proposes to use a defined term for the loans described in § 1041.3(b)(1) for clarity. The Bureau solicits comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(7) Covered Longer-Term Balloon-Payment Loan

Proposed § 1041.2(a)(7) would define covered longer-term balloon-payment loan as a loan described in proposed § 1041.3(b)(2) that requires the consumer to repay the loan in a single payment or repay the loan through at least one payment that is more than twice as large as any other payment under the loan. Proposed § 1041.9(b)(2) contains certain rules that lenders would have to follow when determining whether a consumer has the ability to repay a covered longer-term balloon-payment loan. Moreover, some of the restrictions imposed in proposed § 1041.10 would apply to covered longer-term balloon-payment loans in certain situations.

The term covered longer-term balloon-payment loan would include loans that are repayable in a single payment notwithstanding the fact that a loan with a "balloon" payment is often understood in other contexts to mean a loan repayable in multiple payments with one payment substantially larger than the other payments. The Bureau believes that both structures pose similar risks to consumers, and is proposing to treat both longer-term single-payment loans and multi-payment loans with a balloon payment the same for the purposes of proposed §§ 1041.9 and 1041.10. Accordingly, the Bureau is proposing to use a single defined term for both loan types to improve the proposal's readability.

Apart from including single-payment loans within the definition of covered longer-term balloon-payment loans, the term substantially tracks the definition of balloon payment contained in Regulation Z § 1026.32(d)(1), with one additional proviso. The Regulation Z definition requires the larger loan payment to be compared to other "regular periodic payments," whereas proposed § 1041.2(a)(7) requires the larger loan payment to be compared to any other payment(s) under the loan, regardless of whether the payment is a "regular periodic payment." Proposed comments 2(a)(7)-2 and 2(a)(7)-3 explain that "payment" in this context means a payment of principal or interest, and excludes certain charges such as late fees and payments accelerated upon the consumer's default.

The Bureau solicits comment on whether this definition is appropriate in the context of this proposal and whether any additional guidance on the definition is needed. As discussed further in proposed § 1041.3(b)(2), the Bureau also seeks comment on whether longer-term single-payment loans and longer-term loans with balloon payments should be covered regardless of whether the loans are subject to a total cost of credit exceeding a rate of 36 percent per annum, or regardless of whether the lender or service provider obtains a leveraged payment mechanism or vehicle security in connection with the loan.

2(a)(8) Covered Longer-Term Loan

Some restrictions in proposed part 1041 would apply to covered longer-term loans described in proposed § 1041.3(b)(2). Proposed § 1041.3(b)(2) describes covered longer-term loans as loans with a term of longer than 45 days, which are subject to a total cost of credit exceeding a rate of 36 percent per annum, and in which the lender or service provider obtains a leveraged payment mechanism or vehicle title. Some provisions in proposed part 1041 would apply only to covered longer-term loans described in proposed § 1041.3(b)(2). For example, proposed § 1041.9 prescribes the ability to repay determination that lenders are required to perform when making covered longer-term loans. Proposed § 1041.10 imposes limitations on lenders making covered longer-term loans to consumers in certain circumstances that may indicate the consumer lacks the ability to repay. The Bureau proposes to use a defined term for the loans described in proposed § 1041.3(b)(2) for clarity. The Bureau solicits comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(9) Credit

Proposed § 1041.2(a)(9) would define credit by cross-referencing the same term as defined in Regulation Z, 12 CFR part 1026. Regulation Z defines credit as the right to defer payment of debt or to incur debt and defer its payment. This term is used in numerous places throughout this proposal to refer generically to the types of consumer financial products that would be subject to the requirements of proposed part 1041.

The Bureau believes that defining this term consistently with an existing regulation would reduce the risk of confusion among consumers, industry, and regulators. The Bureau also believes that the Regulation Z definition is appropriately broad so as to capture the various types of transaction structures that implicate the concerns addressed by proposed part 1041. The Bureau solicits comment on whether the Regulation Z definition of credit is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(10) Electronic Fund Transfer

Proposed § 1041.2(a)(10) would define electronic fund transfer by cross-referencing the same term as defined in Regulation E, 12 CFR part 1005. Proposed § 1041.3(c) provides that a loan may be a covered longer-term loan if the lender or service provider obtains a leveraged payment mechanism, which can include the ability to withdraw payments from a consumer's account through an electronic fund transfer. Proposed § 1041.14 would impose limitations on lenders' use of various payment methods, including electronic fund transfers. The Bureau believes that defining this term consistently with an existing regulation would reduce the risk of confusion among consumers, industry, and regulators. The Bureau solicits comment on whether the Regulation E definition of electronic fund transfer is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(11) Lender

Proposed § 1041.2(a)(11) would define lender as a person who regularly makes loans to consumers primarily for personal, family, or household purposes. This term is used throughout this proposal to refer to parties subject to the requirements of proposed part 1041. This proposed definition is broader than the general definition of creditor under Regulation Z in that, under this proposed definition, the credit that the lender extends need not be subject to a finance charge as that term is defined by Regulation Z, nor must it be payable by written agreement in more than four installments.

The Bureau is proposing a broader definition than in Regulation Z for many of the same reasons discussed in the section-by-section analyses of proposed §§ 1041.2(a)(14) and 1041.3(b)(2)(ii) for using the total cost of credit as a threshold for covering longer-term loans rather than the traditional definition of APR as defined by Regulation Z. In both cases, the Bureau is concerned that lenders might otherwise shift their fee structures to fall outside traditional Regulation Z concepts and thus outside the coverage of proposed part 1041. For example, the Bureau believes that some loans that otherwise would meet the requirements for coverage under proposed § 1041.3(b) could potentially be made without being subject to a finance charge as that term is defined by Regulation Z. If the Bureau adopted that particular Regulation Z requirement in the definition of lender, a person who regularly extended closed-end credit subject only to an application fee or open-end credit subject only to a participation fee would not be deemed to have imposed a finance charge. In addition, many of the loans that would be subject to coverage under proposed § 1041.3(b)(1) are repayable in a single payment, so those same lenders might also fall outside the Regulation Z trigger for loans payable in fewer than four installments. Thus, the Bureau is proposing to use a definition that is broader than the one contained in Regulation Z to ensure that proposed part 1041 applies as intended. The Bureau solicits comment on whether there are any alternative approaches that might be more appropriate given the concerns set forth above.

At the same time, the Bureau recognizes that some newly formed companies are providing services that, in effect, allow consumers to draw on money they have earned but not yet been paid. Some of these services do not require the consumer to pay any fees or finance charges. Some rely instead on voluntary "tips" to sustain the business, while others are compensated through electronic fund transfers from the consumer's account. Some current or future services may use other business models. The Bureau is also aware of some newly formed companies providing financial management services to low- and moderate-income consumers which include features to smooth income. The Bureau solicits comments on whether such entities are, or should be, excluded from the definition of lender, and if so, whether the definition should be revised. For example, the Bureau solicits comment on whether companies that impose no charge on the consumer, or companies that charge a regular membership fee which is unrelated to the usage of credit, should be considered lenders under the rule.

The Bureau proposes to carry over from the Regulation Z definition of creditor the requirement that a person "regularly" makes loans to a consumer primarily for personal, family, or household purposes in order to be considered a lender under proposed part 1041. As proposed comment 2(a)(11)-1 explains, the test for determining whether a person regularly makes loans is the same as in Regulation Z, and thus depends on the overall number of loans originated, not just covered loans. The Bureau believes it is appropriate to exclude from the definition of lender persons who make loans for personal, family, or household purposes on an infrequent basis so that persons who only occasionally make loans would not be subject to the requirements of proposed part 1041. Such persons could include charitable, religious, or other community institutions that make loans very infrequently or individuals who occasionally make loans to family members.

Some stakeholders have suggested to the Bureau that the definition of lender should be narrowed so as to exclude financial institutions that predominantly make loans that would not be covered loans under the proposed rule. These stakeholders have suggested that some financial institutions only make loans that would be covered loans as an accommodation to existing customers, and that providing such loans is such a small part of these institutions' overall business such that it would not be practical for the institutions to develop the required procedures for making covered loans. The Bureau solicits comment on whether to so narrow the definition of lender based on the quantity of covered loans an entity offers, and, if so, how to define such a de minimis test. The Bureau also solicits more general comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(12) Loan Sequence or Sequence

Proposed § 1041.2(a)(12) would generally define a loan sequence or sequence as a series of consecutive or concurrent covered short-term loans in which each of the loans (other than the first loan) is made while the consumer currently has an outstanding covered short-term loan or within 30 days after the consumer ceased to have a covered short-term loan outstanding. Proposed § 1041.2(a)(12) defines both loan sequence and sequence the same because the terms are used interchangeably in various places throughout this proposal. Proposed § 1041.2(a)(12) also sets forth how a lender must determine a given loan's place within a sequence (for example, whether a loan is a first, second, or third loan in a sequence). Proposed § 1041.6 would also impose certain presumptions that lenders must take into account when making a second or third loan in a sequence, and would prohibit lenders from making a loan sequence with more than three covered short-term loans. Pursuant to proposed § 1041.6, a lender's extension of a non-covered bridge loan as defined in proposed § 1041.2(a)(13) could affect the calculation of time periods for purposes of determining whether a loan is within a loan sequence, as discussed in more detail in proposed comments 6(h)-1 and 6(h)-2.

The Bureau's rationale for proposing to define loan sequence in this manner is discussed in more detail in the section-by-section analysis of proposed §§ 1041.4 and 1041.6. The Bureau solicits comment on whether a definition of loan sequence or sequence based on a 30-day period is appropriate or whether longer or shorter periods would better address the Bureau's concerns about a consumer's inability to repay a covered loan causing the need for a successive covered loan. The Bureau solicits comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(13) Non-Covered Bridge Loan

Proposed § 1041.2(a)(13) would define the term non-covered bridge loan as a non-recourse pawn loan described in proposed § 1041.3(e)(5) that (a) is made within 30 days of the consumer having an outstanding covered short-term loan or outstanding covered longer-term balloon-payment loan made by the same lender or affiliate; and (b) the consumer is required to repay substantially the entire amount due within 90 days of its consummation. Although non-recourse pawn loans would be excluded from coverage under proposed § 1041.3(e)(5), the Bureau has provided rules in proposed §§ 1041.6(h) and § 1041.10(f) to prevent this from becoming a route for evading the rule.

Specifically, proposed §§ 1041.6 and 1041.10 would impose certain limitations on lenders making covered short-term loans and covered longer-term balloon-payment in some circumstances. The Bureau is concerned that if a lender made a non-covered bridge loan between covered loans, the non-covered bridge loan could mask the fact that the consumer's need for a covered short-term loan or covered longer-term balloon-payment loan reflected the spillover effects of a prior such covered loan, suggesting that the consumer did not have the ability to repay the prior loan and that the consumer may not have the ability to repay the new covered loan. If the consumer took out a covered short-term loan or covered longer-term balloon-payment loan immediately following the non-covered pawn loan, but more than 30 days after the last such covered loan, the pawn loan effectively would have "bridged" the gap in what was functionally a sequence of covered loans. The Bureau is concerned that a lender might be able to use such a "bridging" arrangement to evade the requirements of proposed §§ 1041.6 and 1041.10. To prevent evasions of this type, the Bureau is therefore proposing that the days on which a consumer has a non-covered bridge loan outstanding must not be considered in determining whether 30 days had elapsed between covered loans.

Many lenders offer both loans that would be covered and pawn loans; thus, the Bureau believes that pawn loans are the type of non-covered loan that most likely could be used to bridge covered short-term loans or covered longer-term balloon-payment loans. Proposed § 1041.2(a)(13) would limit the definition of non-covered bridge loan to non-recourse pawn loans that consumers must repay within 90 days of consummation. The Bureau believes that loans with terms of longer than 90 days are less likely to be used as a bridge between covered short-term loans or covered longer-term balloon-payment loans.

The Bureau solicits comment on whether pawn loans can be used as a bridge between covered loans, and further solicits comment on whether other types of loans—including, specifically, balloon-payment loans with terms of longer than 45 days but that do not meet the requirements to be covered longer-term loans under proposed section 1041.3(b)(2)—are likely to be used as bridge loans and therefore should be added to the definition of "non-covered bridge loan." The Bureau also solicits more general comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(14) Open-End Credit

Proposed § 1041.2(a)(14) would define open-end credit by cross-referencing the same term as defined in Regulation Z, 12 CFR part 1026, but without regard to whether the credit is consumer credit, as that term is defined in Regulation Z § 1026.2(a)(12), is extended by a creditor, as that term is defined in Regulation Z § 1026.2(a)(17), or is extended to a consumer, as that term is defined in Regulation Z § 1026.2(a)(11). In general, Regulation Z § 1026.2(a)(20) provides that open-end credit is consumer credit in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. For the purposes of defining open-end credit under proposed part 1041, the term credit, as defined in proposed § 1041.2(a)(9), would be substituted for the term consumer credit in the Regulation Z definition of open-end credit; the term lender, as defined in proposed § 1041.2(a)(11), would be substituted for the term creditor in the Regulation Z definition of open-end credit; and the term consumer, as defined in proposed § 1041 2(a)(4), would be substituted for the term consumer in the Regulation Z definition of open-end credit.

The term open-end credit is used in various parts of the rule where the Bureau is proposing to tailor requirements separately for closed-end and open-end credit in light of their different structures and durations. Most notably, proposed § 1041.2(a)(18) would require lenders to employ slightly different methods when calculating the total cost of credit of closed-end versus open-end loans. Proposed § 1041.16(c) also would require lenders to report whether a covered loan is a closed-end or open-end loan.

The Bureau believes that generally defining this term consistently across regulations would reduce the risk of confusion among consumers, industry, and regulators. With regard to the definition of "consumer," however, the Bureau believes that, for the reasons discussed above, it is more appropriate to incorporate the definition from the Dodd-Frank Act rather than the arguably narrower Regulation Z definition. Similarly, the Bureau believes that it is more appropriate to use the broader definition of "lender" contained in proposed § 2(a)(11) that the Regulation Z definition of "creditor."

The Bureau solicits comment on whether the Regulation Z definition of account is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed, particularly as to the substitution of the definitions for "consumer" and "lender" as described above.

2(a)(15) Outstanding Loan

Proposed § 1041.2(a)(15) would define outstanding loan as a loan that the consumer is legally obligated to repay so long as the consumer has made at least one payment on the loan within the previous 180 days. Under this proposed definition, a loan is an outstanding loan regardless of whether the loan is delinquent or the loan is subject to a repayment plan or other workout arrangement if the other elements of the definition are met. Under proposed § 1041.2(a)(12), a covered short-term loan would be considered to be within the same loan sequence as a previous such loan if it is made within 30 days of the consumer having the previous outstanding loan. Proposed §§ 1041.6 and 1041.7 would impose certain limitations on lenders making covered short-term loans within loan sequences, including a prohibition on making additional covered short-term loans for 30 days after the third loan in a sequence.

The Bureau believes that if the consumer has not made any payment on the loan for an extended period of time it may be appropriate to stop considering the loan to be outstanding loan for the purposes of proposed §§ 1041.2(a)(11), 1041.6, 1041.7, 1041.10, 1041.11 and 1041.12. Because outstanding loans are counted as major financial obligations for purposes of underwriting and because treating a loan as outstanding would trigger certain restrictions on further borrowing by the consumer under the proposed rule, the Bureau has attempted to balance several considerations in crafting the proposed definition. One is whether it would be appropriate for very stale and effectively inactive debt to prevent the consumer from accessing credit, even if so much time has passed that it seems relatively unlikely that the new loan is a direct consequence of the unaffordability of the previous loan. Another is how to define very stale and effectively inactive debt for purposes of any cut-off, and to account for the risk that collections might later be revived or that lenders would intentionally exploit a cut-off in an attempt to encourage new borrowing by consumers.

The Bureau is proposing a 180-day threshold as striking an appropriate balance. The Bureau notes that this would generally align with the policy of the Federal Financial Institutions Examination Council, which generally requires depository institutions to charge-off open-end credit at 180 days of delinquency. Although that policy also requires that closed-end loans be charged off after 120 days, the Bureau believes that a uniform 180-day rule for both closed- and open-end loans may be more appropriate given the underlying policy considerations discussed above as well as for simplicity. Proposed comment 2(a)(15)-2 would clarify that a loan ceases to be an outstanding loan as of the earliest of the date the consumer repays the loan in full, the date the consumer is released from the legal obligation to repay, the date the loan is otherwise legally discharged, or the date that is 180 days following the last payment that the consumer has made on the loan. Additionally, proposed comment 2(a)(15)-2 would explain that any payment the consumer makes restarts the 180-day period, regardless of whether the payment is a scheduled payment or in a scheduled amount. Proposed comment 2(a)(15)-2 would further clarify that once a loan is no longer an outstanding loan, subsequent events cannot make the loan an outstanding loan. The Bureau is proposing this one-way valve to ease compliance burden on lenders and to reduce the risk of consumer confusion.

The Bureau solicits comment on whether 180 days is the most appropriate period of time or whether a shorter or longer time period should be used. The Bureau solicits comment on whether a loan should be considered an outstanding loan if it has in fact been charged off by the lender prior to 180 days of delinquency. The Bureau solicits comment on whether a loan should be considered an outstanding loan if there has been activity on a loan more than 180 days after the consumer has made a payment, such as a collections lawsuit brought by the lender or a third-party. The Bureau also solicits comment on whether a loan should be considered an outstanding loan if there has been activity on the loan with the previous 180 days regardless of whether the consumer has made a payment on the loan within the previous 180 days. The Bureau further solicits comment on whether any additional guidance on this definition is needed.

2(a)(16) Prepayment Penalty

Proposed § 1041.2(a)(16) defines prepayment penalty as any charge imposed for paying all or part of the loan before the date on which the loan is due in full. Proposed §§ 1041.11(e) and 1041.12(f) would prohibit lenders from imposing prepayment penalties in connection with certain loans that are conditionally excluded from the ability-to-repay determination required under proposed §§ 1041.9 and 1041.10. This definition is similar to the definition of prepayment penalty in Regulation Z § 1026.32(b)(6), which generally defines prepayment penalty for closed-end transactions as a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due. However, the definition of prepayment penalty in proposed § 1041.2(a)(16) does not restrict the definition of prepayment penalty to charges for paying down the loan principal early, but also includes charges for paying down non-principal amounts due under the loan. The Bureau believes that this broad definition of prepayment penalty is necessary to capture all situations in which a lender may attempt to penalize a consumer for repaying a loan more quickly than a lender would prefer. As proposed comment 2(a)(16)-1 explains, whether a charge is a prepayment penalty depends on the circumstances around the assessment of the charge. The Bureau solicits comment on whether this definition is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed.

2(a)(17) Service Provider

Proposed § 1041.2(a)(17) would define service provider by cross-referencing the same term as defined in the Dodd-Frank Act, 12 U.S.C. 5481(26). In general, the Dodd-Frank Act defines service provider as any person that provides a material service to a covered person in connection with the offering or provision of a consumer financial product or service. Proposed § 1041.3(c) and (d) would provide that a loan is covered under proposed part 1041 if a service provider obtains a leveraged payment mechanism or vehicle title and the other coverage criteria are otherwise met.

The definition of service provider and the provisions in proposed § 1041.3(c) and (d) are designed to reflect the fact that in some States, covered short-term loans and covered longer-term loans are extended to consumers through a multi-party transaction. In these transactions, one entity will fund the loan, while a separate entity, often called a credit access business or a credit services organization, will interact directly with, and obtain a fee or fees from, the consumer. This separate entity will often service the loan and guarantee the loan's performance to the party funding the loan. In the context of covered longer-term loans, the credit access business or credit services organization, and not the party funding the loan, will in many cases obtain the leveraged payment mechanism or vehicle security. In these cases, the credit access business or credit services organization is performing the responsibilities normally performed by a party funding the loan in jurisdictions where this particular business arrangement is not used. Despite the formal division of functions between the nominal lender and the credit access business, the loans produced by such arrangement are functionally the same as those covered loans issued by a single entity and appear to present the same set of consumer protection concerns. Accordingly, the Bureau believes it is appropriate to bring loans made under these arrangements within the scope of coverage of proposed part 1041.

The Bureau believes that defining the term service provider consistently with the Dodd-Frank Act would reduce the risk of confusion among consumers, industry, and regulators. The Bureau solicits comment on whether the Dodd-Frank Act definition of service provider is appropriate in the context of proposed part 1041 and whether any additional guidance on the definition is needed. More broadly, and as further discussed in proposed § 1041.3(c) and (d), the Bureau solicits comment on whether the definition of service provider is sufficient to bring these loans within the coverage of proposed part 1041, or whether loans made through this or similar business arrangements should be covered using a different definition.

2(a)(18) Total Cost of Credit

Proposed § 1041.2(a)(18) would set forth the method by which lenders would calculate the total cost of credit for determining whether a loan would be a covered loan under proposed § 1041.3(b)(2). Proposed § 1041.2(a)(18) would generally define the total cost of credit as the total amount of charges associated with a loan expressed as a per annum rate, including various charges that do not meet the definition of finance charge under Regulation Z. The charges would be included even if they are paid to a party other than the lender. Under proposed § 1041.3(b)(2), a loan with a term of longer than 45 days must have a total cost of credit exceeding a rate of 36 percent per annum in order to be a covered loan.

The Bureau is proposing to use an all-in measure of the cost of credit rather than the definition of APR under Regulation Z for many of the same reasons discussed in § 1041.2(a)(11) for proposing a broader definition of lender than Regulation Z uses in defining creditor. In both cases, the Bureau is concerned that lenders might otherwise shift their fee structures to fall outside traditional Regulation Z concepts and outside of this proposal. Specifically, lenders may impose a wide range of charges in connection with a loan that are not included in the calculation of APR under Regulation Z. If these charges were not included in the calculation of the total cost of credit threshold for determining coverage under proposed part 1041, a lender would be able to avoid the threshold by shifting the costs of a loan by lowering the interest rate and imposing (or increasing) one or more fees that are not included in the calculation of APR under Regulation Z. To prevent this result, and more accurately capture the full financial impact of the credit on the consumer's finances, the Bureau proposes to include any application fee, any participation fee, any charge imposed in connection with credit insurance, and any fee for a credit-related ancillary product as charges that lenders must include in the total cost of credit.

Specifically, proposed § 1041.2(a)(18) would define the total cost of credit as the total amount of charges associated with a loan expressed as a per annum rate, determined as specified in the regulation. Proposed § 1041.2(a)(18)(i) and related commentary describes each of the charges that must be included in the total cost of credit calculation. Proposed § 1041.2(a)(18)(ii) provides that, even if a charge set forth in proposed § 1041.2(a)(18)(i)(A) through (E) would be excluded from the finance charge under Regulation Z, that charge must nonetheless be included in the total cost of credit calculation.

Proposed § 1041.2(a)(18)(i)(A) and (B) provide that charges the consumer pays in connection with credit insurance and credit-related ancillary products and services must be included in the total cost of credit calculation to the extent the charges are incurred (regardless of when the charge is actually paid) at the same time as the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan or within 72 hours thereafter. Proposed § 1041.2(a)(18)(i)(A) and (B) would impose the 72-hour provision to ensure that lenders could not evade coverage under proposed § 1041.3(b)(2)(ii) conditioning the timing of loan proceeds disbursement on whether the consumer purchases credit insurance or other credit related ancillary products or services after consummation. The Bureau believes that the lender's leverage will have diminished by 72 hours after the consumer receives the entirety of the funds available under the loan, and thus it is less likely that any charge for credit insurance or other credit-related ancillary products and services that the consumer agrees to assume after that date is an attempt to avoid coverage under proposed § 1041.3(b)(2)(ii).

Proposed § 1041.2(a)(18)(iii) and related commentary would prescribe the rules for computing the total cost of credit based on those charges. Proposed § 1041.2(a)(18)(iii) contains two provisions for computing the total cost of credit, both of which track the methods already established in Regulation Z. First, for closed-end credit, proposed § 1041.2(a)(18)(iii)(A) would require a lender to follow the rules for calculating and disclosing the APR under Regulation Z, based on the charges required for the total cost of credit, as set forth in proposed § 1041.2(a)(18)(i). In general, the requirements for calculating the APR for closed-end credit under Regulation Z are found in § 1026.22(a)(1), and include the explanations and instructions for computing the APR set forth in appendix J to 12 CFR part 1026.

Second, for open-end credit, proposed § 1041.2(a)(18)(iii)(B) generally would require a lender to calculate the total cost of credit using the methods prescribed in § 1026.14(c) and (d) of Regulation Z, which describe an "optional effective annual percentage rate" for certain open-end credit products. While Regulation Z provides that these calculation methods are optional, these calculation methods would be required to determine coverage of loans under proposed § 1041.3(b)(2) (though a lender may still choose not to disclose the optional effective annual percentage rate in accordance with Regulation Z). Section 1026.14(c) of Regulation Z provides for the methods of computing the APR under three scenarios: (1) When the finance charge is determined solely by applying one or more periodic rates; (2) when the finance charge is or includes a minimum, fixed, or other charge that is not due to application of a periodic rate, other than a charge with respect to a specific transaction; and (3) when the finance charge is or includes a charge relating to a specific transaction during the billing cycle.

This approach mirrors the approach taken by the Department of Defense in defining the MAPR in 32 CFR 232.4(c). The Bureau believes this measure both includes the necessary types of charges that reflect the actual cost of the loan to the consumer and is familiar to many lenders that must make the MAPR calculation, thus reducing the compliance challenges that would result from a new computation.

At the same time, the Bureau recognizes that the total cost of credit or MAPR is a relatively unfamiliar concept for many lenders compared to the APR, which is built into many State laws and which is the cost that will be disclosed to consumers under Regulation Z. The Bureau solicits comment on whether the trigger for coverage should be based upon the total cost of credit rather than the APR. If so, the Bureau solicits comment on whether the elements listed in proposed § 1041.2(a)(18) capture the total cost of credit to the consumer and should be included in the calculation required by proposed § 1041.2(a)(18) and whether there are any additional elements that should be included or any listed elements that should be excluded. For example, some stakeholders have suggested that the amounts paid for voluntary products purchased prior to consummation, or the portion of that amount paid to unaffiliated third parties, should be excluded from the definition of total cost of credit. The Bureau solicits comments on those suggestions.

The Bureau also solicits comment on whether there are operational issues with the use of the total cost of credit calculation methodology for closed- or open-end loans that the Bureau should consider, and if so, whether there are any alternative methods for calculating the total cost of credit for these products that would address the operational issues. The Bureau further solicits comment on whether any additional guidance on this definition is needed.

Section 1041.3 Scope of Coverage; Exclusions

The primary purpose of proposed part 1041 is to identify and adopt rules to prevent unfair and abusive practices as defined in section 1031 of the Dodd-Frank Act in connection with certain consumer credit transactions. Based upon its research, outreach, and analysis of available data, the Bureau is proposing to identify such practices with respect to two categories of loans to which the Bureau proposes to apply this rule: (1) Consumer loans that have a duration of 45 days or less; and (2) consumer loans that have a duration of more than 45 days that have a total cost of credit above a certain threshold and that are either secured by the consumer's motor vehicle, as set forth in proposed § 1041.3(d), or are repayable directly from the consumer's income stream, as set forth in proposed § 1041.3(c).

As described below in the section-by-section analysis of proposed § 1041.4, the Bureau tentatively concludes that it is an unfair and abusive practice for a lender to make a covered short-term loan without making a reasonable determination that the consumer has the ability to repay the loan. The Bureau likewise tentatively concludes that it is an unfair and abusive practice for a lender to make a covered longer-term loan without making a reasonable determination of the consumer's ability to repay the loan. Accordingly, the Bureau proposes to apply the protections of proposed part 1041 to both categories of loans.

Proposed §§ 1041.5 and 1041.9 would require that, before making a covered loan, a lender must determine that the consumer has the ability to repay the loan. Proposed §§ 1041.6 and 1041.10 would impose certain limitations on repeat borrowing, depending on the type of covered loan. Proposed §§ 1041.7, 1041.11, and 1041.12 would provide for alternative requirements that would allow lenders to make covered loans, in certain limited situations, without first determining that the consumer has the ability to repay the loan. Proposed § 1041.14 would impose consumer protections related to repeated lender-initiated attempts to withdraw payments from consumers' accounts in connection with covered loans. Proposed § 1041.15 would require lenders to provide notices to consumers before attempting to withdraw payments on covered loans from consumers' accounts. Proposed §§ 1041.16 and 1041.17 would require lenders to check and report borrowing history and loan information to certain information systems with respect to most covered loans. Proposed § 1041.18 would require lenders to keep certain records on the covered loans that they make. Finally, proposed § 1041.19 would prohibit actions taken to evade the requirements of proposed part 1041.

The Bureau is not proposing to extend coverage to several other types of loans and is specifically proposing to exclude, to the extent they would otherwise be covered under proposed § 1041.3, certain purchase money security interest loans, certain loans secured by real estate, credit cards, student loans, non-recourse pawn loans, and overdraft services and lines of credit. The Bureau likewise proposes not to cover loans that have a term of longer than 45 days if they are not secured by a leveraged payment mechanism or vehicle security, or loans that have a total cost of credit below a rate of 36 percent per annum.

By focusing this proposed rule on the types of loans described above, and by proposing to exclude certain types of loans that might otherwise meet the definition of a covered loan from the reach of the proposed rule, the Bureau does not mean to signal any conclusions as to whether it is an unfair or abusive practice to make any other types of loans, such as loans that are not covered by proposed part 1041, without assessing a consumer's ability to repay. Moreover, the proposed rule is not intended to supersede or limit protections imposed by other laws, such as the Military Lending Act and implementing regulations. The coverage limits in this proposal reflect the fact that these are the types of loans the Bureau has studied in depth to date and has chosen to address within the scope of this proposal. Indeed, the Bureau is issuing concurrently with this proposal a Request for Information (the Accompanying RFI) which solicits information and evidence to help assess whether there are other categories of loans for which lenders do not determine the consumer's ability to repay that may pose risks to consumers. The Bureau is also seeking comment in response to the Accompanying RFI as to whether there are additional lender practices with regard to covered loans that may warrant further action by the Bureau.

The Bureau notes that all "covered persons" within the meaning of the Dodd-Frank Act have a duty not to engage in unfair, deceptive, or abusive acts or practices. The Bureau may consider on a case-by-case basis, through its supervisory or enforcement activities, whether practices akin to those addressed here are unfair, deceptive, or abusive in connection with loans not covered by this proposal. The Bureau also may engage in future rulemaking with respect to other types of loans or practices on covered loans at a later date.

3(a) General

Proposed § 1041.3(a) would provide that proposed part 1041 applies to a lender that makes covered loans.

3(b) Covered Loans

Section 1031(b) of the Dodd-Frank Act empowers the Bureau to prescribe rules to identify and prevent unfair, deceptive, or abusive acts or practices associated with consumer financial products or services. Section 1002(5) of the Dodd-Frank Act defines such products or services as those offered or provided for use by consumers primarily for personal, family, or household purposes or, in certain circumstances, those delivered, offered, or provided in connection with a consumer financial product or service. Proposed § 1041.3(b) would provide generally that a covered loan means closed-end or open-end credit that is extended to a consumer primarily for personal, family, or household purposes that is not excluded by § 1041.3(e).

By specifying that the rule would apply only to loans that are extended to consumers primarily for personal, family, or household purposes, the Bureau intends to exclude loans that are made primarily for a business, commercial, or agricultural purpose. But a lender would violate proposed part 1041 if it extended a loan ostensibly for a business purpose and failed to comply with the requirements of proposed part 1041 if the loan in fact is primarily for personal, family, or household purposes. See the section-by-section analysis of proposed § 1041.19 for further discussion of evasion issues.

Proposed comment 3(b)-1 would clarify that whether a loan is covered is generally based on the loan terms at the time of consummation. Proposed comment 3(b)-2 clarifies that a loan could be a covered loan regardless of whether it is structured as open-end or closed-end credit. Proposed comment 3(b)-3 explains that the test for determining the primary purpose of a loan is the same as the test prescribed by Regulation Z § 1026.3(a) and clarified by the related commentary in supplement I to part 1026. The Bureau believes that lenders are already familiar with the Regulation Z test and that it would be appropriate to apply that same test here to maintain consistency in interpretation across credit markets. Nevertheless, the related commentary in supplement I to part 1026, on which lenders are permitted to rely in interpreting proposed § 1041.3(b), does not discuss particular situations that may arise in the markets that would be covered by proposed part 1041. The Bureau solicits comment on whether the test for determining the primary purpose of a loan presents a risk of lender evasion, and whether additional clarification is needed on how to determine the primary purpose of a covered loan.

3(b)(1)

Proposed § 1041.3(b)(1) would bring within the scope of proposed part 1041 loans in which the consumer is required to repay substantially the entire amount due under the loan within 45 days of either consummation or the advance of loan proceeds. Loans of this type, as they exist in the market today, typically take the form of single-payment loans, including "payday" loans, vehicle title loans, and deposit advance products. However, coverage under proposed § 1041.3(b)(1) would not be limited to single-payment products, but rather would include any single-advance loan with a term of 45 days or less and any multi-advance loan where repayment is required within 45 days of a credit draw.[417] Under proposed § 1041.2(a)(6), this type of covered loan would be defined as a covered short-term loan.

Specifically, proposed § 1041.3(b)(1) prescribes different tests for determining whether a loan is a covered short-term loan based on whether or not the loan is closed-end credit that does not provide for multiple advances to consumers. For closed-end credit that does not provide for multiple advances to consumers, a loan would be a covered short-term loan if the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation. For all other types of loans, a loan would not be a covered short-term loan if the consumer is required to repay substantially the entire amount of an advance within 45 days of the advance under the loan. As proposed comments 3(b)(1)-1 explains, a loan does not provide for multiple advances to a consumer if the loan provides for full disbursement of the loan proceeds only through disbursement on a single specific date. The Bureau believes that a different test to determine whether a loan is a covered short-term loan is appropriate for loans that provide for multiple advances to consumers because open-end credit and closed-end credit providing for multiple advances may be consummated long before the consumer incurs debt that must be repaid. If, for example, the consumer waited more than 45 days after consummation to draw on an open-end line, but the loan agreement required the consumer to repay the full amount of the draw within 45 days of the draw, the loan would not be practically different than a closed-end loan repayable within 45 days of consummation. The Bureau believes it is appropriate to treat the loans the same for the purposes of proposed § 1041.3(b)(1). The Bureau solicits comment on whether these differential coverage criteria for single-advance and multiple-advance loans are appropriate, particularly in light of unique or emerging loan structures that may pose special challenges or risks.

As described in part II, the terms of short-term loans are often tied to the date the consumer receives his or her paycheck or benefits payment. While pay periods typically vary from one week to one month, and expense cycles are typically one month, the Bureau is proposing 45 days as the upper bound for covered short-term loans in order to accommodate loans that are made shortly before a consumer's monthly income is received and that extend beyond the immediate income payment to the next income payment. These circumstances could result in loans that are somewhat longer than a month in duration but nonetheless pose similar risks of harm to consumers as loans with a duration of a month or less.

The Bureau also considered proposing to define these short-term loans as loans that are substantially repayable within either 30 days of consummation or advance, 60 days of consummation or advance, or 90 days of consummation or advance. The Bureau is not proposing the 30-day period because, as described above, some loans for some consumers who are paid on a monthly basis can be slightly longer than 30 days, and yet still essentially constitute a one-pay-cycle, one-expense-cycle loan. The Bureau is not proposing either the 60-day or 90-day period because loans with those terms encompass multiple income and expense cycles, and thus may present somewhat different risks to consumers, though such loans would be covered longer-term loans if they meet the criteria set forth in proposed § 1041.3(b)(2). The Bureau solicits comment on whether covered short-term loans should be defined to include all loans in which the consumer is required to repay substantially the entire amount due under the loan within 45 days of consummation or advance, or whether another loan term is more appropriate.

As discussed further below, the Bureau proposes to treat longer-term loans, as defined in proposed § 1041.3(b)(2), as covered loans only if the total cost of credit exceeds a rate of 36 percent per annum and if the lender or service provider obtains a leveraged payment mechanism or vehicle security as defined in proposed § 1041.3(c) and (d). The Bureau is not proposing similar limitations with respect to the definition of covered short-term loans because the evidence available to the Bureau suggests that the structure and short-term nature of these loans give rise to consumer harm even in the absence of costs above the 36 percent threshold or particular means of repayment.

Proposed comment 3(b)(1)-3 would explain that a determination of whether a loan is substantially repayable within 45 days requires assessment of the specific facts and circumstances of the loan. Proposed comment 3(b)(1)-4 provides guidance on determining whether loans that have alternative, ambiguous, or unusual payment schedules would fall within the definition. The key principle in determining whether a loan would be a covered short-term loan or a covered longer-term loan is whether, under applicable law, the consumer would be considered to be in breach of the terms of the loan agreement if the consumer failed to repay substantially the entire amount of the loan within 45 days of consummation. The Bureau solicits comment on whether the approach explained in proposed comment 3(b)(1)-3 appropriately delineates the distinction between the types of covered loans.

3(b)(2)

Proposed § 1041.3(b)(2) would bring within the scope of proposed part 1041 several types of loans for which, in contrast to loans covered under proposed § 1041.3(b)(1), the consumer is not required to repay substantially the entire amount of the loan or advance within 45 days of consummation or advance. Specifically, proposed § 1041.3(b)(2) would extend coverage to longer-term loans with a total cost of credit exceeding a rate of 36 percent per annum if the lender or service provider also obtains a leveraged payment mechanism as defined in proposed § 1041.3(c) or vehicle security as defined in proposed § 1041.3(d) in connection with the loan before, at the same time, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive. Under proposed § 1041.2(a)(8), this type of covered loan would be defined as a covered longer-term loan. Proposed § 1041.2(a)(7) would specifically define covered longer-term balloon-payment loan for purposes of certain provisions in proposed §§ 1041.6, 1041.9, and 1041.10.

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[417] While application of the 45-day duration limit for covered short-term loans varies based on whether the loan is a single- or multiple-advance loan, the Bureau often uses the phrase "within 45 days of consummation" throughout this proposal as a short-hand way of referring to coverage criteria of both types of loans.

As described in more detail in proposed § 1041.8, it appears to the Bureau to be an unfair and abusive practice for a lender to make covered longer-term loans without determining that the consumer has the ability to repay the loan. The Bureau discusses the thresholds that would trigger the definition of covered longer-term loan and seeks related comment below. The Bureau recognizes that the criteria set forth in proposed § 1041.3(b)(2) may encompass some loans that are not used for the same types of liquidity needs that have been the primary focus of the Bureau's study. For example, some lenders make unsecured loans to finance purchases of household durable goods or to enable consumers to consolidate preexisting debt. Such loans are typically for larger amounts or longer terms than, for example, a typical payday loan. On the other hand, larger and longer-term loans that have a higher cost, if secured by a leveraged payment mechanism or vehicle security, may pose enhanced risk to consumers in their own right, and an exclusion for larger or longer-term loans could provide an avenue for lender evasion of the consumer protections imposed by proposed part 1041. The Bureau also solicits comment on whether coverage under proposed § 1041.3(b)(2) should be limited by a maximum loan amount and, if so, what the appropriate amount would be. The Bureau further solicits comment on whether any such limitation should apply only with respect to fully amortizing loans in which payments are not timed to coincide with the consumer's paycheck or other expected receipt of income, and whether any other protective conditions, such as the absence of a prepayment penalty or restrictions on methods of collection in the event of a default, should accompany and such limitation.

As noted above, the Bureau is publishing an Accompanying RFI concurrent with this notice of proposed rulemaking soliciting information and evidence to help assess whether there are other categories of loans that are generally made without underwriting and as to which the failure to assess the consumer's ability to repay is unfair or abusive. Further, as the Accompanying RFI indicates, the Bureau may, in an individual supervisory or enforcement action, assess whether a lender's failure to make such an assessment is unfair or abusive. As reflected in the Accompanying RFI, the Bureau is particularly interested to seek information to determine whether loans involving a non-purchase money security in personal property or holding consumers' personal identification documents create the same lender incentives and increased risk of consumer harms as described below with regard to leveraged payment mechanisms and vehicle security.

3(b)(2)(i)

Proposed § 1041.3(b)(2)(i) would bring within the scope of proposed part 1041 the above-described longer-term loans only to the extent that they are subject to a total cost of credit, as defined in proposed § 1041.2(a)(18), exceeding a rate of 36 percent per annum. This total cost of credit demarcation would apply only to those types of loans listed in § 1041.3(b)(2); the types of loans listed in proposed § 1041.3(b)(1) would be covered even if their total cost of credit is below 36 percent per annum. The total cost of credit measure set forth in proposed § 1041.2(a)(18) includes a number of charges that are not included in the APR measure set forth in Regulation Z, 12 CFR 1026.4 in order to more fully reflect the true cost of the loan to the consumer.

Proposed § 1041.3(b)(2)(i) would bring within the scope of proposed part 1041 only longer-term loans with a total cost of credit exceeding a rate of 36 percent per annum in order to focus regulatory treatment on the segment of the longer-term credit market on which the Bureau has significant evidence of consumer harm. As explained in proposed comment 3(b)(2)-1, using a cost threshold excludes certain loans with a term of longer than 45 days and for which lenders may obtain a leveraged payment mechanism or vehicle security, but which the Bureau is not proposing to cover in this rulemaking. For example, the cost threshold would exclude from the scope of coverage low-cost signature loans even if they are repaid through the lender's access to the consumer's deposit account.

The Bureau's research has focused on loans that are typically priced with a total cost of credit exceeding a rate of 36 percent per annum. Further, the Bureau believes that as the cost of a loan increases, the risk to the consumer increases, especially where the lender obtains a leveraged payment mechanism or vehicle security. When higher-priced loans are coupled with the preferred payment position derived from a leveraged payment mechanism or vehicle security, the Bureau believes that lenders have a reduced incentive to underwrite carefully since the lender will have the ability to extract payments even from some consumers who cannot afford to repay and will in some instances be able to profit from the loan even if the consumer ultimately defaults. As discussed above in connection with proposed § 1041.2(a)(18), the Bureau believes that it may be more appropriate to use a total cost of credit threshold rather than traditional APR.

The Bureau recognizes that numerous State laws impose a 36 percent APR usury limit, meaning that it is illegal under those laws to charge an APR higher than 36 percent. That 36 percent APR ceiling reflects the judgment of those States that loans with rates above that limit are per se harmful to consumers and should be prohibited. Congress made a similar judgment in the Military Lending Act in creating a 36 percent all-in APR usury limit with respect to credit extended to servicemembers and their families. Congress, in section 1027(o) of the Dodd-Frank Act,[418] has determined that the Bureau is not to "establish a usury limit," and the Bureau respects that determination. The Bureau is not proposing to prohibit lenders from charging interest rates, APRs, or all-in costs above the demarcation. Rather, the Bureau is proposing to require that lenders make a reasonable assessment of consumers' ability to repay certain loans above the 36 percent demarcation, in light of evidence of consumer harms in the market for loans with this characteristic.

The Bureau believes for the reasons set forth above and in the section-by-section analysis of proposed § 1041.9, that it is appropriate to focus regulatory attention on the segment of longer-term lending that poses the greatest risk of causing the types of harms to consumers

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[418] Section 1027(o) of the Dodd-Frank Act provides that "No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law." 12 U.S.C. 5517(o).

that this proposal is meant to address, and that price is an element in defining that segment. The Bureau also believes that setting the line of demarcation at 36 percent would facilitate compliance given its use in other contexts, such as the Military Lending Act. Such differential regulation does not implicate section 1027(o) of the Dodd-Frank Act. The Bureau believes that the prohibition on the Bureau "establish[ing] a usury limit" is reasonably interpreted not to prohibit such differential regulation given that the Bureau is not proposing to prohibit lenders from charging interest rates above a specified limit.

The Bureau recognizes that a number of States impose a usury threshold lower than 36 percent per annum for various types of covered loans. Like all State usury limits, and, indeed, like all State laws and regulations that provide additional protections to consumers over and above those contained in the proposed rule, those limits would not be affected by this rule. At the same time, the Bureau is conscious that other States have set other limits and notes that the total cost of credit threshold is not meant to restrict the ability of lenders to offer higher-cost loans. The total cost of credit threshold is intended solely to demarcate loans that—when they include certain other features such as a leveraged payment mechanism or vehicle security—pose an increased risk of causing the type of harms to consumers that this proposal is meant to address. The protections imposed by this proposal would operate as a floor across the country, while leaving State and local jurisdictions to adopt additional regulatory requirements (whether a usury limit or another form of protection) above that floor as they judge appropriate to protect consumers in their respective jurisdictions.

Thus, the Bureau believes that a total cost of credit exceeding 36 percent per annum provides a useful line of demarcation. The Bureau solicits comment on whether a total cost of credit of 36 percent per annum is an appropriate measurement for the purposes of proposed § 1041.3(b)(2)(i) or whether a lower or higher measure would be more appropriate. In the discussion of proposed § 1041.2(a)(18), the Bureau has solicited comment on the components of the total cost of credit metric and the tradeoffs involved in using this metric relative to annual percentage rate.

3(b)(2)(ii)

Proposed § 1041.3(b)(2)(ii) would bring within the scope of proposed part 1041 loans in which the lender or a service provider obtains a leveraged payment mechanism, as defined by proposed § 1041.3(c), or vehicle security, as defined by proposed § 1041.3(d), before, at the same time, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan. A leveraged payment mechanism gives a lender the right to initiate a transfer of money from a consumer's account to satisfy an obligation. The Bureau believes that loans in which the lender obtains a leveraged payment mechanism may pose an increased risk of harm to consumers, especially where payment schedules are structured so that payments are timed to coincide with expected income flows into the consumer's account. As detailed in the section-by-section analyses of proposed §§ 1041.9 and 1041.13, the Bureau believes that the practice of extending higher-cost credit that has a leveraged payment mechanism or vehicle security without reasonably determining the consumer's ability to repay the loan appears to constitute an unfair and abusive act or practice.

The loans that would be covered under the proposal vary widely as to the basis for leveraged payment mechanism as well as cost, structure, and level of underwriting. Through its outreach, the Bureau is aware that some stakeholders have expressed concern that certain loans that might be considered less risky for consumers would be swept into coverage by virtue of a lien against the consumer's account granted to the depository lender by Federal statute. The Bureau is not proposing an exemption for select bases for leveraged payment mechanism but is proposing, as is set forth in §§ 1041.11 and 1041.12, conditional exemptions from certain requirements for covered loans made by any lender, including depositories, with certain features that would present less risk to consumers.

The proposed rule would not prevent a lender from obtaining a leveraged payment mechanism or vehicle security when originating a loan. The Bureau recognizes that consumers may find it a convenient or a useful form of financial management to authorize a lender to deduct loan payments automatically from a consumer's account or paycheck. The proposal would not prevent a consumer from doing so. The Bureau also recognizes that obtaining a leveraged payment mechanism or vehicle security generally reduces the lender's risk. The proposal would not prohibit a lender from doing so. Rather, the proposal would impose a duty on lenders to determine the consumer's ability to repay when a lender obtains a leveraged payment mechanism or vehicle security. As discussed above with regard to proposed § 1041.2(a)(17), the requirement would apply where either the lender or its service provider obtains a leveraged payment mechanism or vehicle security in order to assure comprehensive coverage.

The Bureau is not proposing to cover longer-term loans made without a leveraged payment mechanism or vehicle security in part because if a lender is not assured of obtaining a leveraged payment mechanism or vehicle security as of the time the lender makes the loan, the Bureau believes the lender has a greater incentive to determine the consumer's ability to repay. If, however, the lender is essentially assured of obtaining a leveraged payment mechanism or vehicle security as of the time the lender makes the loan, the Bureau believes the lender has less of an incentive to determine the consumer's ability to repay.

For this reason, as proposed comment 3(b)(2)(ii)-1 explains, a lender or service provider obtaining a leveraged payment mechanism or vehicle security would trigger coverage under proposed part 1041 only if the lender or service provider obtains the leveraged payment mechanism or vehicle security before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan. A loan would not be covered under proposed § 1041.3(b)(2)(ii) if the lender or service provider obtains a leveraged payment mechanism or vehicle security more than 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan.

The Bureau is proposing this 72-hour timeframe rather than focusing solely on obtaining leveraged payment mechanisms or vehicle security taken at consummation because the Bureau is concerned that lenders could otherwise consummate loans in reliance on the lenders' ability to exert influence over the customer and extract a leveraged payment mechanism or vehicle security while the funds are being disbursed and shortly thereafter. As discussed below, the Bureau is concerned that if the lender is confident it can obtain a leveraged payment mechanism or a vehicle security interest, the lender is less likely to evaluate carefully whether the consumer can afford the loan. The Bureau believes that the lender's leverage will ordinarily have diminished by 72 hours after the consumer receives the entirety of the funds available under the loan and that the proposed 72-hour rule would help to ensure that the lender will engage in appropriate consideration of the consumer's ability to repay the loan. Accordingly, the Bureau believes that it is generally appropriate to use the relative timing of disbursement and leveraged payment mechanism or vehicle security authorization to determine whether a loan should be subject to the consumer protections imposed by proposed part 1041.

However, even with this general approach, the Bureau is concerned that lenders might seek to evade the intended scope of the rule if they were free to offer incentives or impose penalties on consumers after the 72-hour period in an effort to secure a leveraged payment mechanism or vehicle security. Accordingly, as described below in connection with the anti-evasion provisions proposed in § 1041.19, the Bureau is proposing comment 19(a)-2.i.B to state that it is potentially an evasion of proposed part 1041 for a lender to offer an incentive to a consumer or create a detriment for a consumer in order to induce the consumer to grant the lender a leveraged payment mechanism or vehicle title in connection with a longer-term loan with total cost of credit exceeding a rate of 36 percent per annum unless the lender determines that the consumer has the ability to repay.

Proposed comment 3(b)(2)(ii)-2 further explains how to determine whether a consumer has received the entirety of the loan proceeds. For closed-end loans, a consumer receives the entirety of the loan proceeds if the consumer can receive no further funds without consummating another loan. For open-end loans, a consumer receives the entirety of the loan proceeds if the consumer fully draws down the entire credit plan and can receive no further funds without replenishing the credit plan, increasing the amount of the credit plan, repaying the balance, or consummating another loan. Proposed comment 3(b)(2)(ii)-3 explains that a contract provision granting the lender or service provider a leveraged payment mechanism or vehicle security contingent on some future event is sufficient to bring the loan within the scope of coverage.

The approach taken in proposed § 1041.3(b)(2)(ii) differs from the approach considered in the Small Business Review Panel Outline. Under the approach in the Small Business Review Panel Outline, a loan with a term of more than 45 days would be covered if a lender obtained a leveraged payment mechanism or vehicle security before the first payment was due on the loan. Upon further consideration, however, the Bureau believes that the approach in proposed § 1041.3(b)(2)(ii) is appropriate to ensure coverage of situations in which lenders obtain a leveraged payment mechanism or vehicle security in connection with a new extension on an open-end credit plan that was not a covered loan at original consummation, or prior to a modification or refinancing of an existing open- or closed-end credit plan that was not a covered loan at original consummation. The Bureau believes that this approach has the benefit of ensuring adequate consumer protections in origination situations in which lenders may not have an incentive to determine the consumer's ability to repay, while at the same time allowing for consumers to set up automatic repayment as a matter of convenience at a later date.

The Bureau solicits comment on the criteria for coverage set forth in proposed § 1041.3(b)(2)(ii), including whether the criteria should be limited to cover loans where the scheduled payments are timed to coincide with the consumer's expected inflow of income. In addition, the Bureau seeks comment on the basis on which, and the timing at which, a determination should be made as to whether a lender has secured a leveraged payment mechanism or vehicle security. For example, in outreach, some consumer advocates have suggested that a loan should be treated as a covered loan if the lender reasonably anticipates that it will obtain a leveraged payment mechanism or vehicle security at any time while the loan is outstanding based on the lender's experience with similar loans. The Bureau invites comments on the workability of such a test and, if adopted, where to draw the line to define the point at which the lender's prior success in obtaining a leveraged payment mechanism or vehicle security would trigger coverage for future loans.

The Bureau also notes that while consumers may elect to provide a leveraged payment mechanism post-consummation for their own convenience, it is more difficult to envision circumstances in which a consumer would choose to grant vehicle security post-consummation. One possible scenario would be that a consumer is having trouble repaying the loan and provides a security interest in the consumer's vehicle in exchange for a concession by the lender. The Bureau is concerned that a consumer who provides a vehicle security under such circumstances may face a significant risk of harm. The Bureau therefore solicits comment on whether a loan with an all-in cost of credit above 36 percent should be deemed a covered loan if, at any time, the lender obtains vehicle security. However, given the limited circumstances in which a consumer would grant vehicle security after consummation, the Bureau also seeks comment on whether, for a loan with an all-in cost of credit above 36 percent, lenders should be prohibited from taking a security interest in a vehicle after consummation.

3(c) Leveraged Payment Mechanism

Proposed § 1041.3(c) would set forth three ways that a lender or a service provider could obtain a leveraged payment mechanism that would bring the loan within the proposed coverage of proposed part 1041. A lender would obtain a leveraged payment mechanism if the lender has the right to initiate a transfer of money from the consumer's account to repay the loan, if the lender has the contractual right to obtain payment from the consumer's employer or other payor of expected income, or if the lender requires the consumer to repay the loan through payroll deduction or deduction from another source of income. In all three cases, the consumer is required, under the terms of an agreement with the lender, to cede autonomy over the consumer's account or income stream in a way that the Bureau believes changes that lender's incentives to determine the consumer's ability to repay the loan and can exacerbate the harms the consumer experiences if the consumer does not have the ability to repay the loan and still meet the consumer's major financial obligations and basic living expenses. As explained in the section-by-section analysis of proposed §§ 1041.8 and 1041.9, the Bureau believes that it is an unfair and abusive practice for a lender to make such a loan without determining that the consumer has the ability to repay.

3(c)(1)

Proposed § 1041.3(c)(1) would generally provide that a lender or a service provider obtains a leveraged payment mechanism if it has the right to initiate a transfer of money, through any means, from a consumer's account (as defined in proposed § 1041.2(a)(1)) to satisfy an obligation on a loan. For example, this would occur with a post-dated check or preauthorization for recurring electronic fund transfers. However, the proposed regulation would not define leveraged payment mechanism to include situations in which the lender or service provider initiates a one-time electronic fund transfer immediately after the consumer authorizes such transfer.

As proposed comment 3(c)(1)-1 explains, the key principle that makes a payment mechanism "leveraged" is whether the lender has the ability to "pull" funds from a consumer's account without any intervening action or further assent by the consumer. In those cases, the lender's ability to pull payments from the consumer's account gives the lender the ability to time and initiate payments to coincide with expected income flows into the consumer's account. This means that the lender may be able to continue to obtain payment (as long as the consumer receives income and maintains the account) even if the consumer does not have the ability to repay the loan while meeting his or her major financial obligations and basic living expenses. In contrast, a payment mechanism in which the consumer "pushes" funds from his or her account to the lender does not provide the lender leverage over the account in a way that changes the lender's incentives to determine the consumer's ability to repay the loan or exacerbates the harms the consumer experiences if the consumer does not have the ability to repay the loan.

Proposed comment 3(c)(1)-2 provides examples of the types of authorizations for lender-initiated transfers that constitute leveraged payment mechanisms. These include checks written by the consumer, authorizations for electronic fund transfers (other than immediate one-time transfers as discussed further below), authorizations to create or present remotely created checks, and authorizations for certain transfers by account-holding institutions (including a right of set-off). Proposed comment 3(c)(1)-3 explains that a lender does not obtain a leveraged payment mechanism if a consumer authorizes a third party to transfer money from the consumer's account to a lender as long as the transfer is not made pursuant to an incentive or instruction from, or duty to, a lender or service provider. The Bureau solicits comment on whether this definition of leveraged payment mechanism appropriately captures payment methods that are likely to produce the risks to consumers identified by the Bureau in the section-by-section analysis of proposed § 1041.8.

As noted above, proposed § 1041.3(c)(1) would provide that a lender or service provider does not obtain a leveraged payment mechanism by initiating a one-time electronic fund transfer immediately after the consumer authorizes the transfer. This provision is similar to what the Bureau is proposing in § 1041.15(b), which exempts lender from providing the payment notice when initiating a single immediate payment transfer at the consumer's request, as that term is defined in § 1041.14(a)(2), and is also similar to what the Bureau is proposing in § 1041.14(d), which permits lenders to initiate a single immediate payment transfer at the consumer's request even after the prohibition in proposed § 1041.14(b) on initiating further payment transfers has been triggered.

Accordingly, proposed comment 3(c)(1)-3 would clarify that if the loan agreement between the parties does not otherwise provide for the lender or service provider to initiate a transfer without further consumer action, the consumer may authorize a one-time transfer without causing the loan to be a covered loan. Proposed comment 3(c)(1)-3 further clarifies that the phrase "immediately" means that the lender initiates the transfer after the authorization with as little delay as possible, which in most circumstances will be within a few minutes.

The Bureau anticipates that scenarios involving authorizations for immediate one-time transfers will only arise in certain discrete situations. For closed-end loans, a lender is permitted to obtain a leveraged payment mechanism more than 72 hours after the consumer has received the entirety of the loan proceeds without the loan becoming a covered loan. Thus, in the closed-end context, this exception would only be relevant if the consumer was required to make a payment within 72 hours of receiving the loan proceeds—a situation which is unlikely to occur. However, the situation may be more likely to occur with open-end credit. Longer-term open-end can be covered loans if the lender obtains a leveraged payment mechanism within 72 hours of the consumer receiving the full amount of the funds which the consumer is entitled to receive under the loan. Thus, if a consumer only partially drew down the credit plan, but the consumer was required to make a payment, a one-time electronic fund transfer could trigger coverage without the one-time immediate transfer exception. The Bureau believes it is appropriate for these transfers not to trigger coverage because there is a reduced risk that such transfers will re-align lender incentives in a similar manner as other types of leveraged payment mechanisms.

The Bureau solicits comment on whether this exclusion from the definition of leveraged payment mechanism is appropriate and whether additional guidance is needed. The Bureau also solicits comment on whether any additional exceptions to the general principle of proposed § 1041.3(c)(1) are appropriate.

3(c)(2)

Proposed § 1041.3(c)(2) would provide that a lender or a service provider obtains a leveraged payment mechanism if it has the contractual right to obtain payment directly from the consumer's employer or other payor of income. This scenario typically involves a wage assignment, which, as described by the FTC, is "a contractual transfer by a debtor to a creditor of the right to receive wages directly from the debtor's employer. To activate the assignment, the creditor simply submits it to the debtor's employer, who then pays all or a percentage of debtor's wages to the creditor." [419] These arrangements are creatures of State law and can take various forms. For example, they can be used either as a method of making regular payments during the term of the loan or as a collections tool when borrowers default. Such arrangements are legal in some jurisdictions, but illegal in others.

As discussed further in Market Concerns—Short-Term Loans, the Bureau is concerned that where loan agreements provide for assignments of income, the lender incentives and potential consumer risks can be very similar to those presented by other forms of leveraged payment mechanism defined in proposed § 1041.3(c). In particular, a lender—as when it has the right to initiate transfers from a consumer's account—can continue to obtain payment as long as the consumer receives income, even if the consumer does not have the ability to repay the loan while meeting her major financial obligations and basic living expenses. And—as when a lender has the right to initiate transfers from a consumer's account—an assignment of income can change the lender's incentives to determine the consumer's ability to repay the loan and exacerbate the harms the consumer experiences if the consumer does not have the ability to repay the loan. Thus, the Bureau believes that loan agreements that provide for assignments of income may present the same risk of harm to consumers as other types of leveraged payment mechanisms. The Bureau seeks comment on the proposed definition and whether additional guidance is needed.

The Bureau recognizes that some consumers may find it a convenient or useful form of financial management to repay a loan through a revocable wage assignment. The proposed rule would not prevent a consumer from doing so. Rather, the proposed rule would impose a duty on lenders to determine the consumer's ability to repay when the lender or service provider has the right to obtain payment directly from the consumer's employer or other payor of income.

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[419] 49 FR 7740, 7755 (Mar. 1, 1984).

3(c)(3)

Proposed § 1041.3(c)(3) would provide that a lender or a service provider obtains a leveraged payment mechanism if the loan requires the consumer to repay through a payroll deduction or deduction from another source of income. As proposed comment 3(c)(3)-1 explains, a payroll deduction involves a direction by the consumer to the consumer's employer (or other payor of income) to pay a portion of the consumer's wages or other income to the lender or service provider, rather than a direction by the lender to the consumer's employer as in a wage assignment. The Bureau is concerned that if an agreement between the lender and consumer requires the consumer to have his or her employer or other payor of income pay the lender directly, the consumer would be in the same situation and face the same risk of harm as if the lender had the ability to initiate a transfer from the consumer's account or had a right to a wage assignment.

The Bureau recognizes that just as some consumers may find it a convenient or useful form of financial management to authorize a lender to deduct loan payments automatically from a consumer's account, so, too, may some consumers find it a convenient or useful form of financial management to authorize their employer to deduct loan payments automatically from the consumer's paycheck and remit the money to the lender. The proposed rule would not prevent a consumer from doing so. Rather, the proposed rule would impose a duty on lenders to determine the consumer's ability to repay only when a lender requires the consumer to authorize such payroll deduction as a condition of the loan thereby imposing a contractual obligation on the consumer to continue such payroll deduction during the term of the loan. The Bureau solicits comment on whether a lender should have a duty to determine the consumer's ability to repay only when the lender requires payroll deduction, or whether such a duty should also apply when the lender incentivizes payroll deduction.

3(d) Vehicle Security

Proposed § 1041.3(d) would provide that a lender or service provider obtains vehicle security if the lender or service provider obtains an interest in a consumer's motor vehicle, regardless of how the transaction is characterized under State law. Under proposed § 1041.3(d), a lender or service provider could obtain vehicle security regardless of whether the lender or service provider has perfected or recorded the interest. A lender or service provider also would obtain vehicle security under proposed § 1041.3(d) if the consumer pledges the vehicle to the lender or service provider in a pawn transaction and the consumer retains possession of the vehicle during the loan. In each case, a lender or service provider would obtain vehicle security under proposed § 1041.3(d) if the consumer is required, under the terms of an agreement with the lender or service provider, to grant an interest in the consumer's vehicle to the lender in the event that the consumer does not repay the loan.

However, as noted above and discussed further below, proposed § 1041.3(e) would exclude loans made solely and expressly for the purpose of financing a consumer's initial purchase of a motor vehicle in which the lender takes a security interest as a condition of the credit, as well as non-recourse pawn loans in which the lender has sole physical possession and use of the property for the entire term of the loan. Proposed comment 3(d)(1)-1 also clarifies that mechanic liens and other situations in which a party obtains a security interest in a consumer's motor vehicle for a reason that is unrelated to an extension of credit do not trigger coverage.

The Bureau believes that when a lender obtains vehicle security in connection with the consummation of a loan, the lender effectively achieves a preferred payment position similar to the position that a lender obtains with a leveraged payment mechanism. If the loan is unaffordable, the consumer will face the difficult choice of either defaulting on the loan and putting the consumer's automobile (and potentially the consumer's livelihood) at risk or repaying the loan even if doing so means defaulting on major financial obligations or foregoing basic living needs. As a result, the lender has limited incentive to assure that the consumer has the ability to repay the loan. For these reasons, the Bureau believes that it is appropriate to include within the definition of covered longer-term loans those loans for which the lender or service provider obtains vehicle security before, at the same time as, or within 72 hours after the consumer receives all the funds the consumer is entitled to receive under the loan. However, as noted above, the Bureau solicits comment on whether a longer-term loan with an all-in cost of credit above 36% should be deemed a covered loan if, at any time, the lender obtains vehicle security.

3(d)(1)

Proposed § 1041.3(d)(1) would provide that any security interest that the lender or service provider obtains as a condition of the loan would constitute vehicle security for the purpose of determining coverage under proposed part 1041. The term security interest would include any security interest that the lender or service provider has in the consumer's vehicle, vehicle title, or vehicle registration. As proposed comment 3(d)(1)-1 clarifies, a party would not obtain vehicle security if that person obtains a security interest in the consumer's vehicle for a reason unrelated to the loan.

The security interest would not need to be perfected or recorded in order to trigger coverage under proposed § 1041.3(d)(1). The consumer may not be aware that the security interest is not perfected or recorded, nor would it matter in many cases. Perfection or recordation protects the lender's interest in the vehicle against claims asserted by other creditors, but does not necessarily affect whether the consumer's interest in the vehicle is at risk if the consumer does not have the ability to repay the loan. Even if the lender or service provider does not perfect or record its security interest, the security interest can still change a lender's incentives to determine the consumer's ability to repay the loan and exacerbate the harms the consumer experiences if the consumer does not have the ability to repay the loan.

3(d)(2)

Proposed § 1041.3(d)(2) would provide that pawn transactions generally would constitute vehicle security for the purpose of determining coverage under proposed part 1041 if the consumer pledges the vehicle in connection with the transaction and the consumer retains use of the vehicle during the term of the pawn agreement. However, pawn transactions would not trigger coverage if they fell within the scope of proposed § 1041.3(e)(5), which would exclude bona fide non-recourse pawn transactions where the lender obtains custody of the vehicle and there is no recourse against the consumer for the balance due if the consumer is unable to repay the loan.

The proposed language is designed to account for the fact that, in response to laws in several jurisdictions, lenders have structured higher-cost, vehicle-secured loans as pawn agreements,[420] though these "vehicle pawn" or "title pawn" loans are the functional equivalent of loans covered by proposed § 1041.3(d) in which the lender has vehicle security because the terms on which the loans are offered are similar. Further, the ramifications for both the lender and the consumer are similar in the event the consumer does not have the ability to repay the loan—the lender can repossess the consumer's vehicle and sell it. And, as also discussed in the section-by-section analysis for proposed § 1041.3(e)(5), vehicle pawn and title pawn loans often do not require the consumer to relinquish physical control of the motor vehicle while the loan is outstanding, which is likely to make the threat of repossession a more powerful form of leverage should the consumer not repay the covered loan. Accordingly, the Bureau proposes to treat vehicle title pawn loans the same as vehicle security loans for the purposes of proposed part 1041.

3(e) Exclusions

Proposed § 1041.3(e) would exclude purchase money security interest loans extended solely for the purchase of a good, real estate secured loans, certain credit cards, student loans, non-recourse pawn loans in which the consumer does not possess the pledged collateral, and overdraft services and lines of credit. The Bureau believes that notwithstanding the potential term, cost of credit, repayment structure, or security of these loans, they arise in distinct markets that the Bureau believes may pose a somewhat different set of concerns for consumers. At the same time, as discussed further below, the Bureau is concerned that there may be a risk that these exclusions would create avenues for evasion of the proposed rule.

The Bureau solicits comment on whether any of these excluded types of loans should also be covered under proposed part 1041. The Bureau further solicits comment on whether there are reasons for excluding other types of products from coverage under proposed part 1041. As noted above, the Bureau is also soliciting in the Accompanying RFI information and additional evidence to support in further assessment of whether there are other categories of loans for which lenders do not determine the consumer's ability to repay that may pose risks to consumers. The Bureau emphasizes that it may determine in a particular supervisory or enforcement matter or in a subsequent rulemaking in light of evidence available at the time that the failure to assess ability to repay when making a loan excluded from coverage here may nonetheless be an unfair or abusive act or practice.

3(e)(1) Certain Purchase Money Security Interest Loans

Proposed § 1041.3(e)(1) would exclude from coverage under proposed part 1041 loans extended for the sole and express purpose of financing a consumer's initial purchase of a good when the good being purchased secures the loan. Accordingly, loans made solely to finance the purchase of, for example, motor vehicles, televisions, household appliances, or furniture would not be subject to the consumer protections imposed by proposed part 1041 to the extent the loans are secured by the good being purchased. Proposed comment 3(e)(1)-1 explains the test for determining whether a loan is made solely for the purpose of financing a consumer's initial purchase of a good. If the item financed is not a good or if the amount financed is greater than the cost of acquiring the good, the loan is not solely for the purpose of financing the initial purchase of the good. Proposed comment 3(e)(1)-1 further explains that refinances of credit extended for the purchase of a good do not fall within this exclusion and may be subject to the requirements of proposed part 1041.

Purchase money loans are typically treated differently than non-purchase money loans under the law. The FTC's Credit Practices Rule generally prohibits consumer credit in which a lender takes a nonpossessory security interest in household goods but makes an exception for purchase money security interests.[421] The Federal Bankruptcy Code, the UCC, and some other State laws apply different standards to purchase money security interests. This differential treatment facilitates the financing of the initial purchase of relatively expensive goods, which many consumers would not be able to afford without a purchase money loan. At this time, the Bureau has not determined that purchase money loans pose similar risks to consumers as the loans covered by proposed part 1041. Accordingly, the Bureau is proposing not to cover such loans at this time. The Bureau solicits comment on this exclusion and whether there are particular types of purchase money loans that pose sufficient risk to consumers to warrant coverage under this proposed rule.

3(e)(2) Real Estate Secured Credit

Proposed § 1041.3(e)(2) would exclude from coverage under proposed part 1041 loans that are secured by real property, or by personal property used as a dwelling, and in which the lender records or perfects the security interest. The Bureau believes that even without this exemption, very few real estate secured loans would meet the coverage criteria set forth in proposed § 1041.3(b). Nonetheless, the Bureau believes a categorical exclusion is appropriate. For the most part, these loans are already subject to Federal consumer protection laws, including, for most closed-end loans, ability-to-repay requirements under Regulation Z § 1026.43. The proposed requirement that the security interest in the real estate be recorded or perfected also strongly discourages attempts to use this exclusion for sham or evasive purposes. Recording or perfecting a security interest in real estate is not a cursory exercise for a lender—recording fees are often charged and documentation is required. As proposed comment 3(e)(2)-1 explains, if the lender does not record or otherwise perfect the security interest in the property during the term of the loan, the loan does not fall under this exclusion and may be subject to the requirements of proposed part 1041. The Bureau solicits comment on this exclusion and whether there are particular types of real-estate secured loans that pose sufficient risk to consumers to warrant coverage under the proposed rule.

3(e)(3) Credit Cards

Proposed § 1041.3(e)(3) would exclude from coverage under proposed part 1041 credit card accounts meeting the definition of "credit card account under an open-end (not home-secured) consumer credit plan" in Regulation Z § 1026.2(a)(15)(ii), rather than products meeting the more general definition of credit card accounts under Regulation Z § 1026.2(a)(15). By focusing on the narrower category, the exemption would apply only to credit card accounts that are subject to the Credit CARD Act of 2009, Public Law 111-24, 123 Stat. 1734 (2009) (CARD Act), which provides various heightened safeguards for consumers. These protections include a limitation that card issuers cannot open a credit card account or increase a credit line on a card account unless the card issuer considers the ability of the consumer to make the required payments under the terms of the account, as well as other protections such as limitations on fees during the first year after account opening, late fee restrictions, and a requirement that card issuers give consumers "a reasonable amount of time" to pay their bill.[422]

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[420] *See, e.g.,* Ala. Code § 5-19A-1 through 5-19A-20; Ga. Code § 44-12-130 through 44-12-138.

[421] 16 CFR 444.2(a)(4).

The Bureau believes that, even without this exemption, few traditional credit card accounts would meet the coverage criteria set forth in proposed § 1041.3(b) other than some secured credit card accounts which may have a total cost of credit above 36 percent and provide for a leveraged payment mechanism in the form of a right of set-off. These credit card accounts are subject to the CARD Act protections discussed above. The Bureau believes that potential consumer harms related to credit card accounts are more appropriately addressed by the CARD Act, implementing regulations, and other applicable law. At the same time, if the Bureau were to craft a broad general exemption for all credit cards as generally defined under Regulation Z, the Bureau would be concerned that a lender seeking to evade the requirements of the rule might seek to structure a product in a way designed to take advantage of this exclusion.

The Bureau has therefore proposed a narrower definition focusing only on those credit cards accounts that are subject to the full range of protections under the CARD Act and its implementing regulations. Among other requirements, the regulations imposing the CARD Act prescribe a different ability-to-repay standard that lenders must follow, and the Bureau believes that the combined consumer protections governing credit card accounts subject to the CARD Act are sufficient for that type of credit. To further mitigate potential consumer risk, the Bureau considered adding a requirement that to be eligible for this exclusion, a credit card would have to be either (i) accepted upon presentation by multiple unaffiliated merchants that participate in a widely-accepted payment network, or (ii) accepted upon presentation solely for the bona fide purchase of goods or services at a particular retail merchant or group of merchants. The Bureau solicits comments on whether to exclude credit cards and, if so, whether the criteria proposed to define the exclusion are appropriate, or whether additional criteria should be added to limit the potential evasion risk identified above.

3(e)(4) Student Loans

Proposed § 1041.3(e)(4) would exclude from coverage under proposed part 1041 loans made, insured, or guaranteed pursuant to a Federal student loan program, and private education loans. The Bureau believes that even without this exemption, very few student loans would meet the coverage criteria set forth in proposed § 1041.3(b). Nonetheless, the Bureau believes a categorical exclusion is appropriate. Federal student loans are provided to students or parents meeting eligibility criteria established by Federal law and regulation such that the protections afforded by this proposed rule would be unnecessary. Private student loans are sometimes made to students based upon their future potential ability to repay (as distinguished from their current ability), but are typically co-signed by a party with financial capacity. These loans raise discrete issues that may warrant Bureau attention at a future time, but the Bureau believes that they are not appropriately considered along with the types of loans at issue in this rulemaking. The Bureau continues to monitor the student loan servicing market for trends and developments, unfair, deceptive, or abusive practices, and to evaluate possible policy responses, including potential rulemaking. The Bureau solicits comment on whether this exclusion is appropriate.

3(e)(5) Non-Recourse Pawn Loans

Proposed § 1041.3(e)(5) generally would exclude from coverage under proposed part 1041 loans secured by pawned property in which the lender has sole physical possession and use of the pawned property for the entire term of loan, and for which the lender's sole recourse if the consumer does not redeem the pawned property is the retention and disposal of the property. Proposed comment 3(e)(5)-1 explains that if any consumer, including a co-signor or guarantor, is personally liable for the difference between the outstanding loan balance and the value of the pawned property, the loan does not fall under this exclusion and may be subject to the requirements of proposed part 1041. As discussed above in connection with proposed § 1041.2(a)(13) and below in connection with proposed §§ 1041.6, 1041.7, and 1041.10, however, a non-recourse pawn loan can, in certain circumstances, be a non-covered bridge loan that could impact restrictions on the lender with regard to a later covered short-term loans.

The Bureau believes that bona fide, non-recourse pawn loans generally pose somewhat different risks to consumers than loans covered under proposed part 1041. As described in part II, non-recourse pawn loans involve the consumer physically relinquishing control of the item securing the loan during the term of the loan. The Bureau believes that consumers may be more likely to understand and appreciate the risks associated with physically turning over an item to the lender when they are required to do so at consummation. Moreover, in most situations, the loss of a non-recourse pawned item over which the lender has sole physical possession during the term of the loan is less likely to affect the rest of the consumer's finances than is either a leveraged payment mechanism or vehicle security. For instance, a pawned item of this nature may be valuable to the consumer, but the consumer most likely does not rely on the pawned item for transportation to work or to pay other obligations. Otherwise, the consumer likely would not have pawned the item under these terms. Finally, because the loans are non-recourse, in the event that a consumer is unable to repay the loan, the lender must accept the pawned item as fully satisfying the debt, without further collections activity on any remaining debt obligation.

In all of these ways, pawn transactions appear to differ significantly from the secured loans that would be covered under proposed part 1041. While the loans described in proposed § 1041.3(e)(5) would not be covered loans, lenders may, as described in proposed §§ 1041.6, 1041.7, and 1041.10 be subject to restrictions on making covered loans shortly following certain non-recourse pawn loans that meet certain conditions. The Bureau solicits comment on this exclusion and whether these types of pawn loans should be subject to the consumer protections imposed by proposed part 1041.

3(e)(6) Overdraft Services and Overdraft Lines of Credit

Proposed § 1041.3(e)(6) would exclude from coverage under proposed part 1041 overdraft services on deposit accounts as defined in 12 CFR 1005.17(a), as well as payments of overdrafts pursuant to a line of credit subject to Regulation Z, 12 CFR part 1026. Overdraft services generally operate on a consumer's deposit account as a negative balance, where the consumer's bank processes and pays certain payment transactions for which the consumer lacks sufficient funds in the account and imposes a fee for the service as an alternative to either refusing to authorize the payment (in the case of most debit and ATM transactions and ACH payments initiated from the consumer's account) or rejecting the payment and charging a non-sufficient funds fee (in the case of other ACH payments as well as paper checks). Overdraft services have been exempted from regulation under Regulation Z under certain circumstances, and are subject to specific rules under EFTA[423] and the Truth in Savings Act, and their respective implementing regulations.[424] In contrast, overdraft lines of credit are separate open-end lines of credit under Regulation Z that have been linked to a consumer's deposit account to provide automatic credit draws to cover the processing of payments for which there are not sufficient funds in the deposit account.

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[422] 15 U.S.C. 1665e; *see also* 12 CFR 1026.51(a); Supplement I to 12 CFR part 1026.

As discussed above in part II, the Bureau is engaged in research and other activity in anticipation of a separate rulemaking regarding overdraft products and practices.[425] Given that overdraft services and overdraft lines of credit involve complex overlays with rules regarding payment processing, deposit accounts, set-off rights, and other forms of depository account access, the Bureau believes that any discussion of whether additional regulatory protections are warranted for those two products should be reserved for that rulemaking. Accordingly, the Bureau is proposing to exempt both types of overdraft products from the scope of this rule, using definitional language in Regulation E to distinguish both overdraft services and overdraft lines of credit from other types of depository credit products. The Bureau solicits comment on whether additional guidance would be helpful to distinguish overdraft services and overdraft lines of credit from other products, whether that distinction is appropriate for purposes of this rulemaking, and whether the Bureau should factor particular product features or safeguards into the way it differentiates between depository credit products.

Subpart B—Short-Term Loans

In proposed § 1041.4, the Bureau proposes to identify an unfair and abusive act or practice with respect to the making of covered short-term loans pursuant to its authority to "prescribe rules . . . identifying as unlawful unfair, deceptive, or abusive acts or practices."[426] In the Bureau's view, it appears to be both unfair and abusive for a lender to make such a loan without reasonably determining that the consumer has the ability to repay the loan. To avoid committing this unfair and abusive practice, a lender would have to reasonably determine that the consumer has the ability to repay the loan. Proposed §§ 1041.5 and 1041.6 would establish a set of requirements to prevent the unlawful practice by reasonably determining that the consumer has the ability to repay the loan. The Bureau is proposing the ability-to-repay requirements under its authority to prescribe rules for "the purpose of preventing [unfair and abusive] acts or practices."[427] Proposed § 1041.7 would rely on section 1022(b)(3) of the Dodd-Frank Act to exempt from the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6, as well as from the prohibition in § 1041.4 certain covered short-term loans which satisfy a set of conditions designed to avoid the harms that can result from unaffordable loans. Accordingly, lenders seeking to make covered short-term loans would have the choice, on a case by case basis, either to follow proposed §§ 1041.5 and 1041.6, or proposed § 1041.7.

The predicate for the proposed identification of an unfair and abusive act or practice in proposed § 1041.4—and thus for the prevention requirements contained in proposed §§ 1041.5 and 1041.6—is a set of preliminary findings with respect to the consumers who use storefront and online payday loans, single-payment auto title loans, and other short-term loans, and the impact on those consumers of the practice of making such loans without assessing the consumers' ability to repay.[428] Those preliminary findings are set forth in the discussion below, hereinafter referred to as Market Concerns—Short-Term Loans. After laying out these preliminary findings, the Bureau sets forth, in the section-by-section analysis of proposed § 1041.4, its reasons for proposing to identify as unfair and abusive the practice described in proposed § 1041.4. The Bureau seeks comment on all aspects of this subpart, including the intersection of the proposed interventions with existing State, tribal, and local laws and whether additional or alternative protections should be considered to address the core harms discussed below.

Market Concerns—Short-Term Loans

The Bureau is concerned that lending practices in the markets for storefront and online payday lending, single-payment vehicle title, and other short-term loans are causing harm to many consumers who use these products, including extended sequences of reborrowing, delinquency and defaults, and certain collateral harms from making unaffordable payments. This section reviews the available evidence with respect to the consumers who use payday and short-term auto title loans, their reasons for doing so, and the outcomes they experience. It also reviews the lender practices that cause these outcomes. The Bureau preliminarily finds:

- *Lower-income, lower-savings consumers.* Consumers who use these products tend to come from lower or moderate income households. They generally do not have any savings to fall back on, and they have very limited access to other sources of credit; indeed, typically they have sought unsuccessfully to obtain other, lower cost, credit before turning to a short-term loan.
- *Consumers in financial difficulty.* Some consumers turn to these products because they have experienced a sudden drop in income ("income shock") or a large unexpected expense ("expense shock"). Other borrowers are in circumstances in which their expenses consistently outstrip their income. A sizable percentage of users report that they would have taken a loan on any terms offered.
- *Loans do not function as marketed.* Lenders market single-payment products as short-term loans designed to provide a bridge to the consumer's next payday or other income receipt. In practice, however, the amounts due consume such a large portion of the consumer's paycheck or other periodic income source as to be unaffordable for most consumers seeking to recover from an income or expense shock and even more so for consumers with a chronic income shortfall. Lenders actively encourage consumers either simply to pay the finance charges due and roll over the loan instead of repaying the loan in full (or effectively roll over the loan by returning to reborrow in the days after repaying the loan). Indeed, lenders are dependent upon such

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[423] 74 FR 59033 (Nov. 17, 2009).

[424] 70 FR 29582 (May 24, 2005).

[425] *CFPB Study of Overdraft Programs White Paper; CFPB Data Point: Checking Account Overdraft.*

[426] 12 U.S.C. 5531(b).

[427] *Id.*

[428] The Bureau's analysis of this market is based primarily on research regarding payday loans, single-payment auto title loans, and deposit advance products. The Bureau is not aware of other substantial product offerings that would meet the definition of covered short-term loans, but as discussed below, believes any product structure involving a similarly short repayment term may pose similar risks to consumers.

reborrowing for a substantial portion of their revenue and would lose money if each borrower repaid the loan when due without reborrowing.

- *Very high reborrowing rates.* Not surprisingly, most borrowers find it necessary to reborrow when their loan comes due or shortly after repaying their loan, as other expenses come due. This reborrowing occurs both with payday loans and single-payment vehicle title loans. Fifty percent of all new storefront payday loans are followed by at least three more loans and 33 percent are followed by six more loans. For single-payment vehicle title loans over half (56 percent) of all new loans are followed by at least three more loans, and more than a third (36 percent) are followed by six or more loans. Twenty-one percent of payday loans made to borrowers paid weekly, bi-weekly, or semi-monthly are in loan sequences of 20 loans or more and over forty percent of loans made to borrowers paid monthly are in loan sequences of comparable durations (*i.e.,* 10 or more monthly loans).
- *Consumers do not expect lengthy loan sequences.* Consumers who take out a payday loan do not expect to reborrow to the extent that they do. This is especially true of those consumers who end up in extended cycles of indebtedness. Research shows that when taking out loans consumers are unable accurately to predict how long it will take them to get out of debt, and that this is even truer of consumers who have borrowed heavily in the recent past. Consumers' difficulty in this regard is based, in part, on the fact that such loans involve a basic mismatch between how they appear to function as short-term credit and how they are actually designed to function in long sequences of reborrowing. This disparity creates difficulties for consumers in estimating with any accuracy how long they will remain in debt and how much they will ultimately pay for the initial extension of credit. Research regarding consumer decision-making also helps explain why consumers end up reborrowing more than they expect. People under stress, including consumers in financial crisis, tend to become very focused on their immediate problems and think less about the future. Consumers also tend to underestimate their future expenses, and may be overly optimistic about their ability to recover from the shock they have experienced or to bring their expenses in line with their incomes.
- *Very high default rates.* Some consumers do succeed in repaying short-term loans without reborrowing, and others eventually repay the loan after reborrowing multiple times. But research shows that approximately 20 percent of payday loan sequences and 33 percent of single-payment vehicle title loan sequences end up with the consumer defaulting. Consumers who are delinquent or who default can become subject to often aggressive and psychologically harmful debt collection efforts. In addition, 20 percent of single-payment vehicle title loan sequences end with borrowers losing their cars or trucks to repossession. Even borrowers who eventually pay off their loans may incur penalty fees, late fees, or overdraft fees along the way, and after repaying may find themselves struggling to pay other bills or meet their basic living expenses.
- *Harms occur despite existing regulation.* The research indicates that these harms from payday loans and other short-term loans persist despite existing regulatory frameworks. In particular, the Bureau is concerned that caps on the amount that a consumer can borrow, rollover limitations, and short cooling-off periods still appear to leave many consumers vulnerable to the specific harms discussed above relating to reborrowing, default, and collateral harms from making unaffordable payments.

The following discussion reviews the evidence underlying each of these preliminary findings.

a. Borrower Characteristics and Circumstances of Borrowing

Borrowers who take out payday and single-payment vehicle title loans are typically low-to-moderate income consumers who are looking for quick access to cash, who have little to no savings, who often have poor credit histories, and who have limited access to other forms of credit. The desire for immediate cash may be the result of an emergency expense or an unanticipated drop in income, but many who take out payday or vehicle title loans are consumers whose living expenses routinely exceed their income.

1. Borrower Characteristics

A number of studies have focused on the characteristics of payday borrowers. For instance, the FDIC and the U.S. Census Bureau have undertaken several special supplements to the Current Population Survey (CPS Supplement); the most recent available data come from 2013.[429] The CPS supplement found that 46 percent of payday borrowers (including storefront and online borrowers) have a family income of under $30,000.[430] A study covering a mix of storefront and online payday borrowers similarly found that 49 percent had income of $25,000 or less.[431] Other analyses of administrative data that include the income that borrowers reported to lenders are broadly consistent.[432] Additionally, the Bureau found in its analysis of confidential supervisory data that 18 percent of storefront borrowers relied on Social Security or some other form of government benefits or public assistance.[433] The FDIC study further found that payday borrowers are disproportionately Hispanic or African-American (with borrowing rates two to three times higher respectively than for non-Hispanic whites). Female-headed households are more than twice as likely as married couples to be payday borrowers.[434]

The demographic profiles of vehicle title loan borrowers appear to be roughly comparable to the demographics of payday borrowers.[435] Calculations from the CPS Supplement indicate that 40 percent of vehicle title borrowers have annual family incomes under $30,000.[436] Another survey likewise found that 56 percent of title borrowers reported incomes below $30,000, compared with 60 percent for payday borrowers.[437] As with payday borrowers, data from the CPS Supplement show vehicle title borrowers to be disproportionately African-American or Hispanic, and more likely to live in female-headed households.

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[429] *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at 83.

[430] *Id.,* at Appx. D-12a.

[431] Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 35 (2012), *http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf; see also* Gregory Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 27 (2009), *available at http://www.cfsaa.com/portals/0/RelatedContent/Attachments/GWUAnalysis_01-2009.pdf* (61 percent of borrowers have household income under $40,000); Jonathan Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap,* at 5 (2008), *available at http://www.dartmouth.edu/~jzinman/Papers/Zinman_RestrictingAccess_oct08.pdf.*

[432] Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings,* at 18 (2013) [hereinafter *CFPB Payday Loans and Deposit Advance Products White Paper*], *http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf* (reporting that based on confidential supervisory data of a number of storefront payday lenders, borrowers had a reported median annual income of $22,476 at the time of application (not necessarily household income)). Similarly, data from several State regulatory agencies indicate that average incomes range from about $31,000 (Delaware) to slightly over $36,000 (Washington). For Washington, see Wash. Dep't of Fin. Insts., 2014 Payday Lending Report, at 6 (2014), *available at http://www.dfi.wa.gov/sites/default/files/reports/2014-payday-lending-report.pdf;* for Delaware, see Veritec Solutions, *State of Delaware Short-term Consumer Loan Program, Report on Delaware Short-term Consumer Loan Activity For the Year Ending December 31, 2014,* at 6 (2015), *available at http://banking.delaware.gov/pdfs/annual/Short_Term_Consumer_Loan_Database_2014_Operations_Report.pdf.* Research by nonPrime 101 found the median income for online payday borrowers to be $30,000. nonPrime101, *Profiling Internet Small-Dollar Lending,* at 7 (2014), *https://www.nonprime101.com/wp-content/uploads/2013/10/Clarity-Services-Profiling-Internet-Small-Dollar-Lending.pdf.*

[433] *CFPB Payday Loans and Deposit Advance Products White Paper,* at 18.

[434] *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at Appx. D-12a.

Similarly, a survey of borrowers in three States conducted by academic researchers found that vehicle title borrowers were disproportionately female and minority. Over 58 percent of title borrowers were female. African-Americans were over-represented among borrowers compared to their share of the States' population at large. Hispanic borrowers were over-represented in two of the three states; however, these borrowers were underrepresented in Texas, the State with the highest proportion of Hispanic residents in the study.[438]

Studies of payday borrowers' credit histories show both poor credit histories and recent credit-seeking activity. An academic paper that matched administrative data from one storefront payday lender to credit bureau data found that the median credit score for a payday applicant was in the bottom 15 percent of credit scores overall.[439] The median applicant had one open credit card, but 80 percent of applicants had either no credit card or no credit available on a card. The average borrower had 5.2 credit inquiries on her credit report over the preceding 12 months before her initial application for a payday loan (three times the number for the general population), but obtained only 1.4 accounts on average. This suggests that borrowers made repeated but generally unsuccessful efforts to obtain additional other forms of credit first, and sought the payday loan as a "last resort." They may have credit cards but likely do not have unused credit, are often delinquent on one or more cards, and have often experienced multiple overdrafts and/or NSFs on their checking accounts.[440] A recent report analyzing credit scores of borrowers from five large storefront payday lenders provides corroborative support, finding that the average borrower had a VantageScore 3.0[441] score of 532 and that over 85 percent of borrowers had a score below 600, indicating high credit risk.[442] By way of comparison, the national average Vantage Score is 669 and only 30 percent of consumers have a Vantage Score below 600.[443]

Reports using data from a specialty consumer reporting agency indicate that online borrowers have comparable credit scores to storefront borrowers (a mean VantageScore 3.0 score of 525 versus 532 for storefront).[444] Another study based on the data from the same specialty consumer reporting agency and an accompanying survey of online small-dollar credit borrowers reports that 79 percent of those surveyed had been denied traditional credit in the past year due to having a low or no credit score, 62 percent had already sought assistance from family and friends, and 24 percent reported having negotiated with a creditor to whom they owed money.[445] Moreover, heavy use of online payday loans correlated with more strenuous credit-seeking: Compared to light (bottom quartile) users of online loans, heavy (top quartile) users were more likely to have been denied credit in the past year (87 percent of heavy users compared to 68 percent of light users).[446]

Other surveys of payday borrowers add to the picture of consumers in financial distress. For example, in a survey of payday borrowers published in 2009, fewer than half reported having any savings or reserve funds. Almost a third of borrowers (31.8 percent) reported monthly debt to income payments of 30 percent or higher, and more than a third (36.4 percent) of borrowers reported that they regularly spend all the income they receive.[447]

Similarly, a 2010 survey found that over 80 percent of payday borrowers reported making at least one late payment on a bill in the preceding three months, and approximately one quarter reported frequently paying bills late. Approximately half reported bouncing at least one check in the previous three months, and 30 percent reported doing so more than once.[448]

Likewise, a 2012 survey found that 58 percent of payday borrowers report that they struggled to pay their bills on time. More than a third (37 percent) said they would have taken out a loan on any terms offered. This figure rises to 46 percent when the respondent rated his or her financial situation as particularly poor.[449]

2. Circumstances of Borrowing

Several surveys have asked borrowers why they took out their loans or for what purpose they used the loan proceeds. These are challenging questions to study. Any survey that asks about past behavior or events runs some risk of recall errors. In addition, the fungibility of money makes this question more complicated. For example, a consumer who has an unexpected expense may not feel the effect fully until weeks later, depending on the timing of the unexpected expense relative to other expenses and the receipt of income. In that circumstance, a borrower may say either that she took out the loan because of the unexpected expense, or that she took out the loan to cover regular expenses. Perhaps because of this difficulty, results across surveys are somewhat inconsistent, with one finding high levels of unexpected expenses, while others find that payday loans are used primarily to pay for regular expenses.

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[435] None of the sources of information on the characteristics of vehicle title borrowers that the Bureau is aware of distinguish between borrowers taking out single-payment and installment vehicle title loans. The statistics provided here are for borrowers taking out either type of vehicle title loan.

[436] *FDIC National Survey of Unbanked and Underbanked Households: Appendices,* at Appx. D-16a.

[437] Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences,* at 1 (2015), *http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[438] Kathryn Fritzdixon, Jim Hawkins, & Paige Marta Skiba, *Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Markets,* 2014 U. Ill. L. Rev. 1013, 1029-1030 (2014), *available at https://illinoislawreview.org/wp-content/ilr-content/articles/2014/4/Hawkins,Skiba,&Fritzdixon.pdf.*

[439] Bhutta, Skiba, & Tobacman, at 231-33. Note that the credit score used in this analysis was the Equifax Risk Score which ranges from 280-850. Frederic Huynh, *FICO Score Distribution,* FICO Blog (Apr. 15, 2013), *http://www.fico.com/en/blogs/risk-compliance/fico-score-distribution-remains-mixed/.*

[440] Bhutta, Skiba, & Tobacman, at 231-33.

[441] A VantageScore 3.0 score is a credit score created by an eponymous joint venture of the three major credit reporting companies; scores lie on the range 300-850.

[442] nonprime 101, *Can Storefront Payday Borrowers Become Installment loan Borrowers?,* at 5 (2015), *https://www.nonprime101.com/blog/can-storefront-payday-borrowers-become-installment-loan-borrowers/.*

[443] Experian, *State of Credit* (2015), *http://www.experian.com/live-credit-smart/state-of-credit-2015.html.*

[444] nonPrime101, *Can Storefront Payday Borrowers Become Installment Loan Borrowers?,* at 6. Twenty percent of online borrowers are unable to be scored; for storefront borrowers the percentage of unscorable consumers is negligible. However, this may partly reflect the limited quality of the data online lenders obtain and/or report about their customers and resulting inability to obtain a credit report match.

[445] Richard Hendra & Stephen Nunez, MDRC, *The Subprime Lending Database Exploration Study: Initial Findings,* at table 11 (2015) (pre-publication copy on file with authors and available upon request; final version anticipated to be published and posted on MDRC Web site in June 2016 at *http://www.mdrc.org/publication/online-payday-and-installment-loans).*

[446] *Id.* at tables 5-7.

[447] Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 29-32.

[448] Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap,* at 550.

[449] *See* Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans,* at 20 (2013), *http://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans.*

In a 2007 survey of payday borrowers, the most common reason cited for taking out a loan was "an unexpected expense that could not be postponed," with 71 percent of respondents strongly agreeing with this reason and 16 percent somewhat agreeing.[450]

A 2012 survey of payday loan borrowers, on the other hand, found that 69 percent of respondents took their first payday loan to cover a recurring expense, such as utilities, rent, or credit card bills, and only 16 percent took their first loan for an unexpected expense.[451]

Another 2012 survey of over 1,100 users of alternative small-dollar credit products, including pawn, payday, auto title, deposit advance products, and non-bank installment loans, asked separate questions about what borrowers used the loan proceeds for and what precipitated the loan. Responses were reported for "very short term" and "short term" credit; very short term referred to payday, pawn, and deposit advance products. Respondents could report up to three reasons for what precipitated the loan; the most common reason given for very short term borrowing (approximately 37 percent of respondents) was "I had a bill or payment due before my paycheck arrived," which the authors of the report on the survey results interpret as a mismatch in the timing of income and expenses. Unexpected expenses were cited by 30 percent of very short term borrowers, and approximately 27 percent reported unexpected drops in income. Approximately 34 percent reported that their general living expenses were consistently more than their income. Respondents could also report up to three uses for the funds; the most common answers related to paying for routine expenses, with over 40 percent reporting the funds were used to "pay utility bills," over 40 percent reporting the funds were used to pay "general living expenses," and over 20 percent saying the funds were used to pay rent. Of all the reasons for borrowing, consistent shortfalls in income relative to expenses was the response most highly correlated with consumers reporting repeated usage or rollovers.[452]

A recent survey of 768 online payday users drawn from a large administrative database of payday borrowers looked at similar questions, and compared the answers of heavy and light users of online loans.[453] Based on borrowers' self-reported borrowing history, borrowers were segmented into heavy users (users with borrowing frequency in the top quartile of the dataset) and light users (bottom quartile). Heavy users were much more likely to report that they "[i]n past three months, often or always ran out of money before the end of the month" (60 percent versus 34 percent). In addition, heavy users were nearly twice as likely as light users to state their primary reason for seeking their most recent payday loan as being to pay for "regular expenses such as utilities, car payment, credit card bill, or prescriptions" (49 percent versus 28 percent). Heavy users were less than half as likely as light users to state their reason as being to pay for an "unexpected expense or emergency" (21 percent versus 43 percent). Notably, 18 percent of heavy users gave as their primary reason for seeking a payday loan online that they "had a storefront loan, needed another [loan]" as compared to just over 1 percent of light users.

b. Lender Practices

The business model of lenders who make payday and single-payment vehicle title loans is predicated on the lenders' ability to secure extensive reborrowing. As described in the Background section, the typical storefront payday loan has a principal amount of $350, and the consumer pays a typical fee of 15 percent of the principal amount. That means that if a consumer takes out such a loan and repays the loan when it is due without reborrowing, the typical loan would produce roughly $50 in revenue to the lender. Lenders would thus require a large number of "one-and-done" consumers to cover their overhead and acquisition costs and generate profits. However, because lenders are able to induce a large percentage of borrowers to repeatedly reborrow, lenders have built a model in which the typical store has, as discussed in part II, two or three employees serving around 500 customers per year. Online lenders do not have the same overhead costs, but they have been willing to pay substantial acquisition costs to lead generators and to incur substantial fraud losses because of their ability to secure more than a single fee from their borrowers.

The Bureau uses the term "reborrow" to refer to situations in which consumers either roll over a loan (which means they pay a fee to defer payment of the principal for an additional period of time), or take out a new loan within a short period time following a previous loan. Reborrowing can occur concurrently with repayment in back-to-back transactions or can occur shortly thereafter. The Bureau believes that reborrowing often indicates that the previous loan was beyond the consumer's ability to repay and meet the consumer's other major financial obligations and basic living expenses. As discussed in more detail in the section-by-section analysis of proposed § 1041.6, the Bureau believes it is appropriate to consider loans to be reborrowings when the second loan is taken out within 30 days of the consumer being indebted on a previous loan. While the Bureau's 2014 Data Point used a 14-day period and the Small Business Review Panel Outline used a 60-day period, the Bureau is using a 30-day period in this proposal to align with consumer expense cycles, which are typically a month in length. This is designed to account for the fact that where repaying a loan causes a shortfall, the consumer may seek to return during the same expense cycle to get funds to cover downstream expenses. Unless otherwise noted, this section, Market Concerns—Short-Term Loans, uses a 30-day period to determine whether a loan is part of a loan sequence.

The majority of lending revenue earned by storefront payday lenders and lenders that make single-payment vehicle title loans comes from borrowers who reborrow multiple times and become enmeshed in long loan sequences. Based on the Bureau's data analysis, more than half of payday loans are in sequences that contain 10 loans or more.[454] Looking just at loans made to borrowers who are paid weekly, bi-weekly, or semi-monthly, approximately 21 percent of loans are in sequences that are 20 loans or longer.

As discussed below, the Bureau believes that both the short term and the single-payment structure of these loans contributes to the long sequences the borrowers take out. Various lender practices exacerbate the problem by marketing to borrowers who are particularly likely to wind up in long sequences of loans, by failing to screen out borrowers likely to wind up in long-term debt or to establish guardrails to avoid long-term indebtedness, and by actively encouraging borrowers to continue to roll over or reborrow.

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[450] Elliehausen, *An Analysis of Consumers' Use of Payday Loans*, at 35.

[451] Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why*, at 14-16 (2012), *http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf*.

[452] *Id.* at 18-20.

[453] Hendra & Nunez.

[454] This is true regardless of whether sequence is defined using either a 14-day, 30-day, or 60-day period to determine whether loans are within the same loan sequence.

1. Loan Structure

The single-payment structure and short duration of these loans makes them difficult to repay: within the space of a single income or expense cycle, a consumer with little to no savings cushion and who has borrowed to meet an unexpected expense or income shortfall, or who chronically runs short of funds, is unlikely to have the available cash needed to repay the full amount borrowed plus the finance charge on the loan when it is due and to cover other ongoing expenses. This is true for loans of a very short duration regardless of how the loan may be categorized. Loans of this type, as they exist in the market today, typically take the form of single-payment loans, including payday loans, and vehicle title loans, though other types of credit products are possible.[455] The focus of the Bureau's research has been on payday and vehicle title loans, so the discussion in Market Concerns—Short-Term Loans centers on those types of products.

The size of single-payment loan repayment amounts (measured as loan principal plus finance charges owed) relative to the borrower's next paycheck gives some sense of how difficult repayment may be. The Bureau's storefront payday loan data shows that the average borrower being paid on a bi-weekly basis would need to devote 37 percent of her bi-weekly paycheck to repaying the loan. Single-payment vehicle title borrowers face an even greater challenge. In the data analyzed by the Bureau, the median borrower's payment on a 30-day loan is equal to 49 percent of monthly income.[456]

2. Marketing

The general positioning of short-term products in marketing and advertising materials as a solution to an immediate liquidity challenge attracts consumers facing these problems, encouraging them to focus on short-term relief rather than the likelihood that they are taking on a new longer-term debt. Lenders position the purpose of the loan as being for use "until next payday" or to "tide over" the consumer until she receives her next paycheck.[457] These types of product characterizations encourage unrealistic, overly optimistic thinking that repaying the loan will be easy, that the cash short-fall will not recur at the time the loan is due or shortly thereafter, and that the typical payday loan is experienced by consumers as a short-term obligation, all of which lessen the risk in the consumer's mind that the loan will become a long-term debt cycle. Indeed, one study reporting consumer focus group feedback noted that some participants reported that the marketing made it seem like payday loans were "a way to get a cash infusion without creating an additional bill."[458]

In addition to presenting loans as short-term solutions, rather than potentially long-term obligations, lender advertising often focuses on how quickly and easily consumers can obtain a loan. A recent academic paper reviewing the advertisements of Texas storefront and online payday and vehicle title lenders found that speed of getting a loan is the most frequently advertised feature in both online (100 percent) and storefront (50 percent) payday and title loans.[459] Advertising that focuses on immediacy and speed may exploit borrowers' sense of urgency. Indeed, the names of many payday and vehicle title lenders include the words (in different spellings) "speedy," "cash," "easy," and "quick," emphasizing their rapid and simple loan funding.

3. Failure To Assess Ability To Repay

As discussed in part II, storefront payday, online payday, and vehicle title lenders generally gather some basic information about borrowers before making a loan. They normally collect income information, although that may just be self-reported or "stated" income. Payday lenders collect information to ensure the borrower has a checking account, and vehicle title lenders need information about the vehicle that will provide the security for the loan. Some lenders access consumer reports prepared by specialty consumer reporting agencies and engage in sophisticated screening of applicants, and at least some lenders turn down the majority of applicants to whom they have not previously made loans.

One of the primary purposes of this screening, however, is to avoid fraud and other "first payment defaults," *not* to ensure that borrowers will be able to repay the loan without reborrowing. These lenders generally do not obtain information about the borrower's existing obligations or living expenses and do not prevent those with expenses chronically exceeding income, or those who have suffered from an income or expense shock from which they need substantially more time to recover than the term of the loan, from taking on additional obligations in the form of payday or similar loans. Thus, lenders' failure to assess the borrower's ability to repay the loan permits those consumers who have the least ability to repay the loans, and consequently are the most likely to reborrow, to obtain them. Lending to borrowers who cannot repay their loans would generally not be profitable in a traditional lending market, but as described elsewhere in this section, the factors that funnel consumers into cycles of repeat reborrowing turn the traditional model on its head by creating incentives for lenders to actually want borrowers who cannot afford to repay and instead reborrow repeatedly. Although industry stakeholders have argued that lenders making short-term loans already take steps to assess "ability to repay" and will always do so out of economic self-interest, the Bureau believes that this refers narrowly to whether the consumer will default up front on the loan, rather than whether the consumer has the capacity to repay the loan without reborrowing and while meeting other financial obligations and basic living expenses. The fact that lenders often do not perform additional underwriting when borrowers are rolling over a loan or are returning to borrow again soon after repaying a prior loan further evidences that lenders do not see reborrowing as a sign of borrowers' financial distress or as an outcome to be avoided.

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[455] In the past, a number of depository institutions have also offered deposit advance products. A small number of institutions still offer similar products. Like payday loans, deposit advances are typically structured as short-term loans. However, deposit advances do not have a pre-determined repayment date. Instead, deposit advance agreements typically stipulate that repayment will automatically be taken out of the borrower's next qualifying electronic deposit. Deposit advances are typically requested through online banking or over the phone, although at some institutions they may be requested at a branch. As described in more detail in the CFPB Payday Loans and Deposit Advance Products White Paper, the Bureau's research demonstrated similar borrowing patterns in both deposit advance products and payday loans. *See CFPB Payday Loans and Deposit Advance Products White Paper*, at 32-42.

[456] The data used for this calculation is described in *CFPB Data Point: Payday Lending*, at 10-15 and in *CFPB Report on Supplemental Findings*.

[457] *See, e.g.*, Speedy Cash, Can Anyone Get a Payday Loan?, *https://www.speedycash.com/faqs/payday-loans/can-anyone-get-a-payday-loan/* (last visited May 18, 2016) ("Payday loans may be able to help you bridge the gap to your next pay day."); Check Into Cash, FAQs & Policies, *https://checkintocash.com/faqs/in-store-cash-advance/* (last visited May 18, 2016) ("A cash advance is a short-term, small dollar advance that covers unexpected expenses until your next payday."); Cash America, Cash Advance/Short-term Loans, *http://www.cashamerica.com/LoanOptions/CashAdvances.aspx* (last visited May 18, 2016) (noting that "a short-term loan, payday advance or a deferred deposit transaction—can help tide you over until your next payday" and that "A single payday advance is typically for two to four weeks. However, borrowers often use these loans over a period of months, which can be expensive. Payday advances are not recommended as long-term financial solutions."); Cmty. Fin. Servcs. Ass'n of Am., Is A Payday Advance Appropriate For You?, *http://cfsaa.com/what-is-a-payday-advance/is-a-payday-advance-appropriate-for-you.aspx* (last visited May 18, 2016) (The national trade association representing storefront payday lenders analogizes a payday loan to "a cost-efficient 'financial taxi' to get from one payday to another when a consumer is faced with a small, short-term cash need." The Web site elaborates that, "Just as a taxi is a convenient and valuable service for short distance transportation, a payday advance is a convenient and reasonably-priced service that should be used to meet small-dollar, short-term needs. A taxi service, however, is not economical for long-distance travel, and a payday advance is inappropriate when used as a long-term credit solution for ongoing budget management.").

[458] Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans*, at 22 (2013), *http://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans* ("To some focus group respondents, a payday loan, as marketed, did not seem as if it would add to their recurring debt, because it was a short-term loan to provide quick cash rather than an additional obligation. They were already in debt and struggling with regular expenses, and a payday loan seemed like a way to get a cash infusion without creating an additional bill.").

[459] Jim Hawkins, *Using Advertisements to Diagnose Behavioral Market Failure in Payday Lending Markets*, 51 Wake Forest L. Rev. 57, 71 (2016). The next most advertised features in online content are simple application process and no credit check/bad credit OK (both at 97 percent). For storefront lenders, the ability to get a high loan amount was the second most highly advertised content.

4. Encouraging Long Loan Sequences

After lenders attract borrowers in financial crisis, encourage them to think of the loans as a short-term solution, and fail to screen out those for whom the loans are likely to become a long-term debt cycle, lenders then actively encourage borrowers to reborrow and continue to be indebted rather than pay down or pay off their loans. Although storefront payday lenders typically take a post-dated check which could be presented in a manner timed to coincide with deposit of the borrower's paycheck or government benefits, lenders usually encourage or even require borrowers to come back to the store to redeem the check and pay in cash.[460] When the borrowers return, they are typically presented by lender employees with two salient options: Repay the loan in full, or pay a fee to roll over the loan (where permitted under State law). If the consumer does not return, the lender will proceed to attempt to collect by cashing the check. On a $300 loan at a typical charge of $15 per $100 borrowed, the cost to defer the due date for another 14 days until the next payday is $45, while repaying in full would cost $345, which may leave the borrower with insufficient remaining income to cover expenses over the ensuing month and therefore prompt reborrowing. Requiring repayment in person gives staff at the stores the opportunity to frame for borrowers a choice between repaying in full or just paying the finance charge and to encourage them to choose the less immediately painful option of paying just the finance charge. Based on its experience from supervising payday lenders, the Bureau believes that store employees are generally incentivized to maximize a store's loan volume and understand that reborrowing is crucial to achieving that goal.[461]

The Bureau's research shows that payday borrowers rarely reborrow a smaller amount than the initial loan, which would effectively amortize their loans by reducing the principal amount owed over time, thereby reducing their costs and the likelihood that they will need to take seven or ten loans out in a loan sequence. Lenders contribute to this outcome when they encourage borrowers to pay the minimum amount and roll over or reborrow the full amount of the earlier loan. In fact, as discussed in part II, some online payday loans automatically roll over at the end of the loan term unless the consumer takes affirmative action in advance of the due date such as notifying the lender in writing at least 3 days before the due date. Single-payment vehicle title borrowers, or at least those who ultimately repay rather than default, are more likely than payday borrowers to reduce the size of loans taken out in quick succession.[462] This may reflect the effects of State laws regulating vehicle title loans that require some reduction in loan size across a loan sequence. It may also be influenced by the larger median size of vehicle title loans, which is $694, as compared to $350 median loan size of payday loans.

Lenders also actively encourage borrowers who they know are struggling to repay their loans to roll over and continue to borrow. In supervisory examinations and in an enforcement action, the Bureau has found evidence that lenders maintain training materials that promote borrowing by struggling borrowers.[463] In the enforcement matter, the Bureau found that if a borrower did not repay in full or pay to roll over the loan on time, personnel would initiate collections. Store personnel or collectors would then offer new loans as a source of relief from the collections activities. This "cycle of debt" was depicted graphically as part of the standard "loan process" in the company's new hire training manual. The Bureau is aware of similar practices in the vehicle title lending market, where store employees offer borrowers additional cash during courtesy calls and when calling about past-due accounts, and company training materials instruct employees to "turn collections calls into sales calls" and encourage delinquent borrowers to refinance to avoid default and repossession of their vehicles.

It also appears that lenders do little to affirmatively promote the use of "off ramps" or other alternative repayment options, when those are required by law to be available. Such alternative repayment plans could help at least some borrowers avoid lengthy cycles of reborrowing. By discouraging the use of repayment plans, lenders can make it more likely that such consumers will instead reborrow. Lenders that are members of one of the two national trade associations for storefront payday lenders have agreed to offer an extended payment plan to borrowers but only if the borrower makes a request at least one day prior to the date on which the loan is due.[464] (The second national trade association reports that its members provide an extended payment plan option but details on that option are not available.) In addition, about 20 States require payday lenders to offer repayment plans to borrowers who encounter difficulty in repaying payday loans. The usage rate of these repayment plans varies widely but in all cases is relatively low.[465] One explanation for the low take-up rate on these repayment plans may be lender disparagement of the plans or lenders' failure to promote their availability.[466] The Bureau's supervisory examinations uncovered evidence that one or more payday lenders train employees not to mention repayment plans until after the employees have offered renewals, and only then to mention repayment plans if borrowers specifically ask about them.

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[460] The Bureau believes from its experience in conducting examinations of storefront payday lenders and its outreach that cash repayments on payday and vehicle title loans are prevalent, even when borrowers provide post-dated checks or ACH authorizations for repayment. The Bureau has developed evidence from reviewing a number of payday lenders subject to supervisory examination in 2014 that the majority of them call each borrower a few days before payment is due to remind them to come to the store and pay the loan in cash. As an example, one storefront lender requires borrowers to come in to the store to repay. Its Web site states: "All payday loans must be repaid with either cash or money order. Upon payment, we will return your original check to you." Others give borrowers "appointment" or "reminder" cards to return to make a cash payment. In addition, vehicle title loans do not require a bank account as a condition of the loan, and borrowers without a checking account must return to storefront title locations to make payments.

[461] Most storefront lenders examined by the Bureau employ simple incentives that reward employees and store managers for loan volumes.

[462] *See CFPB Single-Payment Vehicle Title Lending,* at 18.

[463] Press Release, Bureau of Consumer Fin. Prot., *CFPB Takes Action Against Ace Cash Express for Pushing Payday Borrowers Into Cycle of Debt* (July 10, 2014), *http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/.*

[464] Cmty. Fin. Srvcs. Ass'n of Am., CFSA Member Best Practices, *http://cfsaa.com/cfsa-member-best-practices.aspx* (last visited May 18, 2016); Cmty. Fin. Srvcs. Ass'n of Am., What Is an Extended Payment Plan?, *http://cfsaa.com/cfsa-member-best-*

5. Payment Mechanisms and Vehicle Title

Where lenders collect payments through post-dated checks, ACH authorizations, and/or obtain security interests in borrowers' vehicles, these mechanisms also can be used to encourage borrowers to reborrow to avoid negative consequences for their transportation or bank account. For example, consumers may feel significantly increased pressure to return to a storefront to roll over a payday or vehicle title loan that includes such features rather than risk suffering vehicle repossession or fees in connection with an attempt to deposit the consumer's post-dated check, such as an overdraft fee or an NSF fees from the bank and returned item fee from the lender if the check were to bounce. The pressure can be especially acute when the lender obtains vehicle security.

And in cases in which consumers do ultimately default on their loans, these mechanisms often increase the degree of harm suffered due to consumers losing their transportation, from account and lender fees, and sometimes from closure of their bank accounts. As discussed in more detail below in Market Concerns—Payments, in its research the Bureau has found that 36 percent of borrowers who took out online payday or payday installment loans and had at least one failed payment during an eighteen-month period had their checking accounts closed by the bank by the end of that period.[467]

c. Patterns of Lending and Extended Loan Sequences

The characteristics of the borrowers, the circumstances of borrowing, the structure of the short-term loans, and the practices of the lenders together lead to dramatic negative outcomes for many payday and vehicle title borrowers. There is strong evidence that a meaningful share of borrowers who take out payday and single-payment vehicle title loans end up with very long sequences of loans, and the loans made to borrowers with these negative outcomes make up a majority of all the loans made by these lenders.[468]

Long loan sequences lead to very high total costs of borrowing. Each single-payment loan carries the same cost as the initial loan that the borrower took out. For a storefront borrower who takes out the average-sized payday loan of $350 with a typical fee of $15 per $100, each reborrowing means paying fees of $45. After just three reborrowings, the borrower will have paid $140 simply to defer payment of the original principal amount by an additional six weeks to three months.

The cost of reborrowing for auto title borrowers is even more dramatic given the higher price and larger size of those loans. The Bureau's data indicates that the median loan size for single-payment vehicle title loans is $694. One study found that the most common APR charged on the typical 30-day title loan is 300 percent, which equates to a rate $25 per $100 borrowed, which is a common State limit.[469] A typical reborrowing thus means that the consumer pays a fee of around $175. After just three reborrowings, a consumer will typically have paid about $525 simply to defer payment of the original principal amount by three additional months.

Evidence for the prevalence of long sequences of payday and auto title loans comes from the Bureau's own work, from analysis by independent researchers and analysts commissioned by industry, and from statements by industry stakeholders. The Bureau has published several analyses of storefront payday loan borrowing.[470] Two of these have focused on the length of loan sequences that borrowers take out. In these publications, the Bureau defined a loan sequence as a series of loans where each loan was taken out either on the day the prior loan was repaid or within

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practices/what-is-an-extended-payment-plan.aspx (last visited May 18, 2016); Fin. Srvc. Ctrs. of Am., Inc., FiSCA Best Practices, *http://www.fisca.org/Content/NavigationMenu/AboutFISCA/CodesofConduct/default.htm* (last visited May 18, 2016).

[465] Washington permits borrowers to request a no-cost installment repayment schedule prior to default. In 2014, 14 percent of payday loans were converted to installment loans. Wash. Dep't of Fin. Insts., 2014 Payday Lending Report, at 7 (2014), *available at http://www.dfi.wa.gov/sites/default/files/reports/2014-payday-lending-report.pdf.* Illinois allows payday loan borrowers to request a repayment plan with 26 days after default. Between 2006 and 2013, the total number of repayment plans requested was less than 1 percent of the total number of loans made in the same period. Ill. Dep't of Fin. & Prof'l Regulation, Illinois Trends Report All Consumer Loan Products Through December 2013, at 19, *available at https://www.idfpr.com/dfi/ccd/pdfs/IL_Trends_Report%202013.pdf.* In Colorado, in 2009, 21 percent of eligible loans were converted to repayment plans before statutory changes repealed the repayment plan. State of Colorado, *2009 Deferred Deposit Lenders Annual Report,* at 2 (2009) (hereinafter Colorado 2009 Deferred Deposit Lenders Annual Report), *available at http://www.coloradoattorneygeneral.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/AnnualReport Composites/2009_ddl_composite.pdf* (last visited May 25, 2016). In Utah, six percent of borrowers entered into an extended payment plan. Utah Dep't of Fin. Insts., Report of the Commissioner of Financial Institutions, at 135, (2015) *available at http://dfi.utah.gov/wp-content/uploads/sites/29/2015/06/Annual1.pdf.* Florida law also requires lenders to extend the loan term on the outstanding loan by sixty days at no additional cost for borrowers who indicate that they are unable to repay the loan when due and agree to attend credit counseling. Although 84 percent of loans were made to borrowers with seven or more loans in 2014, fewer than 0.5 percent of all loans were granted a cost-free term extension. *See* Brandon Coleman & Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law, Center for Responsible Lending,* at 4 (2016), *http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf.*

[466] Colorado's 2009 annual report of payday loan activity noted lenders' self-reporting of practices to restrict borrowers from obtaining the number of loans needed to be eligible for a repayment plan or imposing cooling-off periods on borrowers who elect to take a repayment plan. Colorado 2009 Deferred Deposit Lenders Annual Report. This evidence was from Colorado under the state's 2007 statute which required lenders to offer borrowers a no-cost repayment plan after the third balloon loan. The law was changed in 2010 to prohibit balloon loans, as discussed in part II.

[467] *CFPB Online Payday Loan Payments,* at 12.

[468] In addition to the array of empirical evidence demonstrating this finding, industry stakeholders themselves have expressly or implicitly acknowledged the dependency of most storefront payday lenders' business models on repeat borrowing. A June 20, 2013 letter to the Bureau from an attorney for a national trade association representing storefront payday lenders asserted that, ''[i]n any large, mature payday loan portfolio, loans to repeat borrowers generally constitute between 70 and 90 percent of the portfolio, and for some lenders, even more,'' and that ''[t]he borrowers most likely to roll over a payday loan are, first, those who have already done so, and second, those who have had un-rolled-over loans in the immediately preceding loan period.'' Letter from Hilary B. Miller to Bureau of Consumer Fin. Prot. (June 20, 2013), *available at http://files.consumerfinance.gov/f/201308_cfpb_cfsa-information-quality-act-petition-to-CFPB.pdf.* The letter asserted challenges under the Information Quality Act to the Bureau's published White Paper (2013); *see also* Letter from Ron Borzekowski & B. Corey Stone, Jr., Bureau of Consumer Fin. Prot., to Hilary B. Miller (Aug. 19, 2013) (Bureau's response to the challenge).

[469] Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrower Experiences* (2015), at 3, *http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[470] *See generally CFPB Data Point: Payday Lending; CFPB Payday Loans and Deposit Advance Products White Paper.*

some number of days from when the loan was repaid. The Bureau's 2014 Data Point used a 14-day window to define a sequence of loans. That data has been further refined in the CFPB Report on Supplemental Findings and shows that when a borrower who is not currently in a loan sequence takes out a payday loan, borrowers wind up taking out at least four loans in a row before repaying 43 percent of the time, take out at least seven loans in a row before repaying 27 percent of the time, and take out at least 10 loans in a row before repaying 19 percent of the time.[471] In the CFPB Report on Supplemental Findings, the Bureau re-analyzed the data using 30-day and 60-day definitions of sequences. The results are similar, although using longer windows leads to longer sequences of more loans. Using the 30-day definition of a sequence, 50 percent of loan sequences contain at least four loans, 33 percent of sequences contain at least seven loans, and 24 percent of sequences contain at least 10 loans.[472] A borrower who takes out a fourth loan in a sequence has a 66 percent likelihood of taking out at least three more loans, of a total sequence length of seven loans, a 48 percent likelihood of taking out at least 6 more loans, for a total sequence length of 10 loans.[473]

These findings are mirrored in other analyses. During the SBREFA process, a SER submitted an analysis prepared by Charles River Associates (CRA) of loan data from several small storefront payday lenders.[474] Using a 60-day sequence definition, CRA found patterns of borrowing very similar to those the Bureau found. Compared to the Bureau's results using a 60-day sequence definition, in the CRA analysis there were more loans where the borrower defaulted on the first loan or repaid without reborrowing (roughly 44 percent versus 25 percent), and fewer loans that had 11 or more loans in the sequence, but otherwise the patterns were nearly identical.[475]

Similarly, in an analysis funded by an industry research organization, researchers found a mean sequence length, using a 30-day sequence definition, of nearly seven loans.[476] This is slightly higher than the mean 30-day sequence length in the Bureau's analysis (5.9 loans).

Analysis of a multi-lender, multi-year dataset by a research group affiliated with a specialty consumer reporting agency found that over a period of approximately four years the average borrower had at least one sequence of 9 loans; that 25 percent of borrowers had at least one loan sequence of 11 loans; and that 10 percent of borrowers had at least one loan sequence of 22 loans.[477] Looking at these same borrowers for a period of 11 months—one month longer than the duration analyzed by the Bureau—the researchers found that on average the longest sequence these borrowers experienced over the 11 months was 5.3 loans, that 25 percent of borrowers had a sequence of at least 7 loans, and that 10 percent of borrowers had a sequence of at least 12 loans.[478] This research group also identified a core of users with extremely persistent borrowing. They found that 30 percent of borrowers who took out a loan in the first month of the four-year period also took out a loan in the last month.[479] The median time in debt for this group of extremely persistent borrowers was over 1,000 days, more than half of the four-year period. The median borrower in this group of extremely persistent borrowers had at least one loan sequence of 23 loans long or longer (nearly two years for borrowers paid monthly). Perhaps most alarming, nine percent of this group borrowed continuously for the entire period.[480]

The Bureau has also analyzed single-payment vehicle title loans using the same basic methodology.[481] Using a 30-day definition of loan sequences, the Bureau found that short-term (30-day) single-payment vehicle title loans had loan sequences that were similar to payday loans. More than half, 56 percent, of single-payment vehicle title sequences contained at least four loans; 36 percent contained seven or more loans; and 23 percent had 10 or more loans. Other sources on vehicle title lending are more limited than for payday lending, but are generally consistent. For instance, the Tennessee Department of Financial Institutions publishes a biennial report on 30-day single-payment vehicle title loans. The most recent report shows very similar results to those the Bureau found in its research, with 49 percent of borrowers taking out four or more loans in row, 35 percent taking out more than seven loans in a row, and 25 percent taking out more than 10 loans in a row.[482]

In addition to direct measures of the length of loan sequences, there is ample indirect evidence from the cumulative number of loans that borrowers take out that borrowers are often getting stuck in a long-term debt cycle. The Bureau has measured total borrowing by payday borrowers in two ways. In one study, the Bureau took a snapshot of borrowers in lenders' portfolios at a point in time (measured as borrowing in a particular month) and tracked them for an additional 11 months (for a total of 12 months) to assess overall loan use. This study found that the median borrowing level was 10 loans over the course of a year, and more than half of the borrowers had loans outstanding for more than half of the year.[483] In another study, the Bureau measured the total number of loans taken out by borrowers beginning new loan sequences. It found that these borrowers had lower total borrowing than borrowers who may have been mid-sequence at the beginning of the period, but the median number of loans for the new borrowers was six loans over a slightly shorter (11-month) time period.[484] Research by others finds similar results, with average or median borrowing, using various data sources and various samples, of six to 13 loans per year.[485]

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[471] Bureau of Consumer Fin. Prot., *Supplemental Findings on Payday Loans, Deposit Advance Products, and Vehicle Title Loans* (2016) (hereinafter CFPB Report on Supplemental Findings), *available at http://files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf.*

[472] *Id.* In proposed § 1041.6 the Bureau is proposing some limitations on loans made within a sequence, and in proposed § 1041.2(a)(12), the Bureau is proposing to define a sequence to include loans made within 30 days of one another. The Bureau believes that this is a more appropriate definition of sequence than using either a shorter or longer time horizon for the reasons set forth in the section-by-section analyses of proposed §§ 1041.2(a)(12) and 1041.6. For these same reasons, the Bureau believes that the findings contained in the CFPB Report on Supplemental Findings and cited in text provide the most accurate quantification of the degree of harm resulting from cycles of indebtedness.

[473] These figures are calculated simply by taking the share of sequences that are at least seven (or ten) loans long and diving by the share of sequences that are at least four loans long.

[474] Charles River Associates, *Economic Impact on Small Lenders of the Payday Lending Rules Under Consideration by the CFPB* (2015), *http://www.crai.com/publication/economic-impact-small-lenders-payday-lending-rules-under-consideration-cfpb.* The CRA analysis states that it used the same methodology as the Bureau.

[475] *See generally CFPB Report on Supplemental Findings.*

[476] Marc Anthony Fusaro & Patricia J. Cirillo, *Do Payday Loans Trap Consumers in a Cycle of Debt?,* at 23 (2011), *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960776.*

[477] nonPrime 101, *Report 7B: Searching for Harm in Storefront Payday Lending,* at 22 (2016), *https://www.nonprime101.com/wp-content/uploads/2016/02/Report-7-B-Searching-for-Harm-in-Storefront-Payday-Lending-nonPrime101.pdf.* Sequences are defined based on the borrower pay period, with a loan taken out before a pay period has elapsed since the last loan was repaid being considered part of the same loan sequence.

[478] *Id.* The researchers were able to link borrowers across the five lenders in their dataset and include within a sequence loans taking out from different lenders. Following borrowers across multiple lenders did not materially increase the average length of the longest sequence but did increase the length of sequences for the top decile by one to two loans. *Compare id.* at Table C-2 *with id.* at Table C-1. The author of the report focus on loan sequences where a borrower pays more in fees than the principal amount of the loan as sequences that cause consumer harm. The Bureau does not believe that this is the correct metric for determining whether a borrower has suffered harm.

[479] nonprime 101, *Report 7C: A Balanced View of Storefront Payday Lending* (2016), *https://www.nonprime101.com/data-findings/.*

[480] *Id.* at Table 2. A study of borrowers in Florida claims that almost 80 percent of borrowers use payday loans longer than a year, and 50 percent use payday loans longer than two years. Floridians for Financial Choice, The Florida Model: Baseless and Biased Attacks are Dangerously Wrong on Florida Payday Lending, at 5 (2016), *http://financialchoicefl.com/wp-content/uploads/2016/05/FloridaModelReport.pdf* (last visited May 29, 2016).

[481] *See generally CFPB Single-Payment Vehicle Title Report.*

[482] Tenn. Dep't of Fin. Insts., *2016 Report on the Title Pledge Industry,* at (2016), at 8, *http://www.tennessee.gov/assets/entities/tdfi/attachments/Title_Pledge_Report_2016_Final_Draft_Apr_6_2016.pdf.*

Given differences in the regulatory context and the overall nature of the market, less information is available on online lending than storefront lending. Borrowers who take out payday loans online are likely to change lenders more frequently than storefront borrowers, which makes measuring the duration of loan sequences much more challenging. The limited information that is available suggests that online borrowers take out fewer loans than storefront borrowers, but that borrowing is highly likely to be under-counted. A report commissioned by an online lender trade association, using data from three online lenders making single-payment payday loans, reported an average loan length of 20 days and average days in debt per year of 73 days.[486] The report combines medians of each statistic across the three lenders, making interpretation difficult, but these findings suggest that borrowers take out three to four loans per year at these lenders.

Additional analysis is available based on the records of a specialty consumer reporting agency. These show similar loans per borrower, 2.9, but over a multi-year period.[487] These loans, however, are not primarily single-payment payday loans. A small number are installment loans, while most are "hybrid" loans that typically have a duration of roughly four pay cycles. In addition, this statistic likely understates usage because online lenders may not report all of the loans they make, and some may only report the first loan they make to a borrower. Borrowers may also be more likely to change lenders online, and many lenders do not report to the specialty consumer reporting agency that provided the data for the analysis, so that when borrowers change lenders it may often be the case that their subsequent loans are not in the data analyzed.

d. Consumer Expectations and Understanding of Loan Sequences

Extended sequences of loans raise concerns about the market for short-term loans. This concern is exacerbated by the available empirical evidence regarding consumer understanding of such loans, which strongly indicates that borrowers who take out long sequences of payday loans and vehicle title loans do not anticipate those long sequences.

Measuring consumers' expectations about reborrowing is inherently challenging. When answering survey questions about loan repayment, there is the risk that borrowers may conflate repaying an individual loan with completing an extended sequence of borrowing. Asking borrowers retrospective questions about their expectations at the time they started borrowing is likely to suffer from recall problems, as people have difficulty remembering what they expected at some time in the past. The recall problem is likely to be compounded by respondents tending to want to avoid saying that they made a mistake. Asking about expectations for future borrowing may also be imperfect, as some consumers may not be thinking explicitly about how many times they will roll a loan over when taking out their first loan. Asking the question may cause people to think about it more than they otherwise would have.

Two studies have asked payday and vehicle title borrowers at the time they took out their loans about their expectations about reborrowing, either the behavior of the average borrower or their own borrowing, and compared their responses with actual repayment behavior of the overall borrower population. One 2009 survey of payday borrowers found that over 40 percent of borrowers thought that the average borrower would have a loan outstanding for only two weeks. Another 25 percent responded with four weeks. Translating weeks into loans, the four-week response likely reflects borrowers who believe the average number of loans a borrower take out before repaying is one loan or two loans, depending on the mix of respondents paid bi-weekly or monthly. The report did not provide data on actual reborrowing, but based on analysis by the Bureau and others, this suggests that respondents were, on average, somewhat optimistic about reborrowing behavior.[488] However, it is difficult to be certain that some survey respondents did not conflate the time loans are outstanding with the contract term of individual loans, because the researchers asked borrowers, "What's your best guess of how long it takes the average person to pay back in full a $300 payday loan?", which some borrowers may have interpreted to refer to the specific loan being taken out, and not subsequent rollovers. Borrowers' beliefs about their own reborrowing behavior could also vary from their beliefs about average borrowing behavior by others.

In a study of vehicle title borrowers, researchers surveyed borrowers about their expectations about how long it would take to repay the loan.[489] The report did not have data on borrowing, but compared the responses with the distribution of repayment times reported by the Tennessee Department of Financial Institutions and found that borrowers were slightly optimistic, on average, in their predictions.[490]

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[483] *CFPB Payday Loans and Deposit Advance Products White Paper,* at 23.

[484] *CFPB Data Point: Payday Lending,* at 10-15.

[485] Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default,* at 6 (Vanderbilt University Law School, Law and Economics Working Paper #08-33, 2008), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319751&download=yes* (finding an average of six loans per year for payday borrowers). A study of Oklahoma payday borrowing found an average of nine loans per year. Uriah King and Leslie Parrish, *Payday Loans, Inc.: Short on Credit, Long on Debt,* at 1 (2011), *http://www.responsiblelending.org/payday-lending/research-analysis/payday-loan-inc.pdf.* Another study cites a median of nine loans per year. *See also* Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 43 (finding a median of 9-13 loans in the last year); Michael A. Stegman, *Payday Lending,* 21 J. of Econ. Perspectives 169, 176 (2007), *available at http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.21.1.169.*

[486] G. Michael Flores, *The State of Online Short-term Lending, Statistical Analysis, Second Annual,* at 5 (2015), *http://onlinelendersalliance.org/wp-content/uploads/2015/07/2015-Bretton-Woods-Online-Lending-Study-FINAL.pdf* (last visited May 18, 2016) (commissioned by the Online Lenders Alliance).

[487] nonPrime 101, Report 7-A, "How Persistent in the Borrower-Lender Relationship in Payday Lending?", at Table 1 (September 2015).

[488] Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing and Payday Borrowing*, 66 J. Fin. 1865, 1866 (2011), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01698.x/full.* Based on the Bureau's analysis, approximately 50-55 percent of loan sequences, measured using a 14-day sequence definition, end after one or two loans, including sequences that end in default. *See also CFPB Data Point: Payday Lending*, at 11; *CFPB Report on Supplemental Findings*, at ch. 5. Using a relatively short reborrowing period seems more likely to match how respondents interpret the survey question, but that is speculative. Translating loans to weeks is complicated by the fact that loan terms vary depending on borrowers' pay frequency; four weeks is two loans for a borrower paid bi-weekly, but only one loan for a borrower paid monthly.

[489] Fritzdixon, *et al.*, at 1029-1030.

The two studies just described compared borrowers' predictions of average borrowing with overall average borrowing levels, which is only informative about how accurate borrowers' predictions are on average. A 2014 study by Columbia University Professor Ronald Mann[491] surveyed borrowers at the point at which they were borrowing about their expectations for repaying their loans and compared their responses with their subsequent actual borrowing behavior, using loan records to measure how accurate their predictions were. The results described in Mann's report, combined with subsequent analysis that Professor Mann shared with Bureau staff, show the following.[492]

First, borrowers are very poor at predicting long sequences of loans. Fewer borrowers expected to experience long sequences of loans than actually did experience long sequences. Only 10 percent of borrowers expected to be in debt for more than 70 days (five two-week loans), and only five percent expected to be in debt for more than 110 days (roughly eight two-week) loan, yet the actual numbers were substantially higher. Indeed, approximately 12 percent of borrowers remained in debt after 200 days (14 two-week loans).[493] Borrowers who experienced long sequences of loans had not expected those long sequences when they made their initial borrowing decision; in fact they had not predicted that their sequences would be longer than borrowers overall. And while some borrowers did expect long sequences, those borrowers did not in fact actually have unusually long sequences; as Mann notes, "it appears that those who predict long borrowing periods are those most likely to err substantially in their predictions."[494]

Second, Mann's analysis shows that many borrowers do not appear to learn from their past borrowing experience. Those who had borrowed the most in the past did not do a better job of predicting their future use; they were actually more likely to underestimate how long it would take them to repay fully. As Mann noted in his paper, "heavy users of the product tend to be those that understand least what is likely to happen to them."[495]

Finally, Mann found that borrowers' predictions about the need to reborrow at least once versus not at all were optimistic, with 60 percent of borrowers predicting they would not roll over or reborrow within one pay cycle and only 40 percent actually not doing so.

A trade association commissioned two surveys which suggest that consumers are able to predict their borrowing patterns.[496] These surveys, which were very similar to each other, were of storefront payday borrowers who had recently repaid a loan and had not taken another loan within a specified period of time, and were conducted in 2013 and 2016. Of these borrowers, 94 to 96 percent reported that when they took out the loan they understood well or very well "how long it would take to completely repay the loan" and a similar percentage reported that they, in fact, were able to repay their loan in the amount of time they expected. These surveys suffers from the challenge of asking people to describe their expectations about borrowing at some time in the past, which may lead to recall problems, as described earlier. It is also unclear what the borrowers understood the phrase "completely repay" to mean—whether they took it to mean the specific loan they had recently repaid or the original loan that ultimately led to the loan they repaid. For these reasons, the Bureau does not believe that these studies undermine the evidence above indicating that consumers are generally not able to predict accurately the number of times that they will need to reborrow, particularly with respect to long-term reborrowing.

There are several factors that may contribute to consumers' lack of understanding of the risk of reborrowing that will result from loans that prove unaffordable. As explained above in the section on lender practices, there is a mismatch between how these products are marketed and described by industry and how they operate in practice. Although lenders present the loans as a temporary bridge option, only a minority of payday loans are repaid without any reborrowing. These loans often produce lengthy cycles of rollovers or new loans taken out shortly after the prior loans are repaid. Not surprisingly, many borrowers are not able to tell when they take out the first loan how long their cycles will last and how much they will ultimately pay for the initial disbursement of cash. Even borrowers who believe they will be unable to repay the loan immediately—and therefore expect some amount of reborrowing—are generally unable to predict accurately how many times they will reborrow and at what cost. As noted above, this is especially true for borrowers who reborrow many times.

Moreover, research suggests that financial distress could also be a factor in borrowers' decision making. As discussed above, payday and vehicle title loan borrowers are often in financial distress at the time they take out the loans. Their long-term financial condition is typically very poor. For example, as described above, studies find that both storefront and online payday borrowers have little to no savings and very low credit scores, which is a sign of overall poor financial condition. They may have credit cards but likely do not have unused credit, are often delinquent on one or more cards, and have often experienced multiple overdrafts and/or NSFs on their checking accounts.[497] They typically have tried and failed to obtain other forms of credit before turning to a payday lender or they otherwise may perceive that such other options would not be available to them and that there is no time to comparison shop when facing an imminent liquidity crisis.

Research has shown that when people are under pressure they tend to focus on the immediate problem they are confronting and discount other considerations, including the longer-term implications of their actions. Researchers sometimes refer to this phenomenon as "tunneling," evoking the tunnel-vision decision making people can engage in. Consumers experiencing a financial crisis deciding on whether to take out a loan are a prime example of this behavior.[498] Even when consumers are not facing a crisis, research shows that they tend to underestimate their near-term expenditures,[499] and, when estimating how much financial "slack" they will have in the future, discount even the expenditures they do expect to incur.[500] Finally, regardless of their financial situation, research suggests consumers may generally have unrealistic expectations about their future earnings, their future expenses, and their ability to save money to repay future obligations. Research documents that consumers in many contexts demonstrate "optimism bias" about future events and their own future performance.[501]

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[490] As noted above, the Bureau found that the reborrowing patterns in data analyzed by the Bureau are very similar to those reported by the Tennessee Department of Financial Institutions.

[491] Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers*, 21 Supreme Court Econ. Rev. 105 (2014).

[492] The Bureau notes that Professor Mann draws different interpretations from his analysis than does the Bureau in certain instances, as explained below, and industry stakeholders, including SERs, have cited Mann's study as support for their criticism of the Small Business Review Panel Outline. Much of this criticism is based on Professor Mann's finding that that "about 60 percent of borrowers accurately predict how long it will take them finally to repay their payday loans." *Id.* at 105. The Bureau notes, however, that this was largely driven by the fact that many borrowers predicted that they would not remain in debt for longer than one or two loans, and in fact this was accurate for many borrowers.

[493] *Id.* at 119; Email from Ronald Mann, Professor, Columbia Law School, to Jialan Wang & Jesse Leary, Bureau of Consumer Fin. Prot. (Sept. 24, 2013, 1:32 EDT).

[494] Mann, at 127.

[495] *Id.*

[496] Tarrance Group, et al., Borrower and Voter Views of Payday Loans (2016), *http://www.tarrance.com/docs/CFSA-BorrowerandVoterSurvey-AnalysisF03.03.16.pdf* (last visited May 29, 2016); Harris Interactive, Payday Loans and the Borrower Experience (2013), *http://cfsaa.com/Portals/0/Harris_Interactive/CFSA_HarrisPoll_SurveyResults.pdf* (last visted May 29, 2016). The trade association and SERs have cited this survey in support of their critiques of the Bureau's Small Business Review Panel Outline.

[497] *See* Bhutta, Skiba, & Tobacman, at 16; *CFPB Online Payday Loan Payments*, at 3-4; Brian Baugh, What Happens When Payday Borrowers Are Cut Off From Payday Lending? A Natural Experiment (Aug. 2015) (Ph.D. dissertation, Ohio State University), *available at http://fisher.osu.edu/supplements/10/16174/Baugh.pdf*; nonPrime101, *Profiling Internet Small-Dollar Lending*, at 7 (2014), *https://www.nonprime101.com/wp-content/uploads/2013/10/Clarity-Services-Profiling-Internet-Small-Dollar-Lending.pdf.*

Each of these behavioral biases, which are exacerbated when facing a financial crisis, contribute to consumers who are considering taking out a payday loan or single-payment vehicle title loan failing to assess accurately the likely duration of indebtedness, and, consequently, the total costs they will pay as a result of taking out the loan. Tunneling may cause consumers not to focus sufficiently on the future implications of taking out a loan. To the extent that consumers do comprehend what will happen when the loan comes due, underestimation of future expenditures and optimism bias will cause them to misunderstand the likelihood of repeated reborrowing due to their belief that they are more likely to be able to repay the loan without defaulting or reborrowing than they actually are. And consumers who recognize at origination that they will have difficulty paying back the loan and that they may need to roll the loan over or reborrow may still underestimate the likelihood that they will wind up rolling over or reborrowing multiple times and the high cost of doing so.

Regardless of the underlying explanation, the empirical evidence indicates that borrowers do not expect to be in very long sequences and are overly optimistic about the likelihood that they will avoid rolling over or reborrowing their loans at all.

e. Delinquency and Default

In addition to the harm caused by unanticipated loan sequences, the Bureau is concerned that many borrowers suffer other harms from unaffordable loans in the form of the costs that come from being delinquent or defaulting on the loans. Many borrowers, when faced with unaffordable payments, will be late in making loan payments, and may ultimately cease making payments altogether and default on their loans.[502] They may take out multiple loans before defaulting—69 percent of payday loan sequences that end in default are multi-loan sequences in which the borrower has rolled over or reborrowed at least once before defaulting—either because they are simply delaying the inevitable or because their financial situation deteriorates over time to the point where they become delinquent and eventually default rather than continuing to pay additional reborrowing fees.

While the Bureau is not aware of any data directly measuring the number of late payments across the industry, studies of what happens when payments are so late that the lenders deposit the consumers' original post-dated checks suggest that late payment rates are relatively high. For example, one study of payday borrowers in Texas found that in 10 percent of all loans, the post-dated checks were deposited and bounced.[503] Looking at the borrower level, the study found that half of all borrowers had a check deposited and bounce over the course of the year following their first payday loan.[504] An analysis of data collected in North Dakota showed a lower, but still high, rate of lenders depositing checks that subsequently bounced or attempting to collect loan payment via an ACH payment request that failed. It showed that 39 percent of new borrowers experienced a failed loan payment of this type in the year following their first payday loans, and 46 percent did so in the first two years following their first payday loan.[505] In a public filing, one large storefront payday lender reported a lower rate, 6.5 percent, of depositing checks, of which nearly two-thirds were returned for insufficient funds.[506] In Bureau analysis of ACH payments initiated by online payday and payday installment lenders, 50 percent of online borrowers had at least one overdraft or non-sufficient funds transaction in connection with their loans over an 18 month period. These borrowers' depository accounts incurred an average total of $185 in fees.[507]

Bounced checks and failed ACH payments can be quite costly for borrowers. The median bank NSF fee is $34,[508] which is equivalent to the cost of a rollover on a $300 storefront loan. If the lender makes repeated attempts to collect using these methods, this leads to repeated fees. The Bureau's research indicates that when one attempt fails, online payday lenders make a second attempt to collect 75 percent of the time but are unsuccessful in 70 percent of those cases. The failure rate increases with each subsequent attempt.[509]

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[498] *See generally* Sendhil Mullainathan & Eldar Shafir, Scarcity: The New Science of Having Less and How It Defines Our Lives (2014).

[499] Johanna Peetz & Roger Buehler, *When Distance Pays Off: The Role of Construal Level in Spending Predictions,* 48 J. of Experimental Soc. Psychol. 395 (2012); Johanna Peetz & Roger Buehler, *Is the A Budget Fallacy? The Role of Savings Goals in the Prediction of Personal Spending,* 34 Personality and Social Psychol. Bull. 1579 (2009); Gulden Ulkuman, Manoj Thomas, & Vicki G. Morwitz, *Will I Spend More in 12 Months or a Year? The Effects of Ease of Estimation and Confidence on Budget Estimates,* 35 J. of Consumer Research 245, 249 (2008).

[500] Jonathan Z. Berman, *Expense Neglect in Forecasting Personal Finances,* at 5 (2014) (forthcoming publication in J. Marketing Research), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2542805.*

[501] The original work in the area of optimistic predictions about the future is in the area of predicting how long it will to complete certain tasks in the future. *See, e.g.,* Daniel Kahneman & Amos Tversky, *Intuitive Prediction: Biases and Corrective Procedures,* 12 TIMS Studies in Mgmt. Science 313 (1979); Roger Buehler, Dale Griffin, & Michael Ross, *Exploring the "Planning Fallacy": Why People Underestimate their Task Completion Times,* 67 J. Personality & Soc. Psychol. 366 (1994); Roger Buehler, Dale Griffin, & Michael Ross, *Inside the Planning Fallacy: The Causes and Consequences of Optimistic Time Prediction, in* Heuristics and Biases: The Psychology of Intuitive Judgment, at 250-70 (Thomas Gilovich, Dale Griffin, & Daniel Kahneman eds., 2002).

[502] This discussion uses the term "default" to refer to borrowers who do not repay their loans. Precise definitions will vary across analyses, depending on specific circumstances and data availability.

[503] Skiba & Tobacman, at 6. The study did not separately report the percentage of loans on which the checks that were deposited were paid.

[504] These results are limited to borrowers paid on a bi-weekly schedule.

[505] Susanna Montezemolo & Sarah Wolff, *Payday Mayday: Visible and Invisible Payday Defaults,* at 4 (2015), *available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/finalpaydaymayday_defaults.pdf.*

[506] "For the years ended December 31, 2011 and 2010, we deposited customer checks or presented an Automated Clearing House ("ACH") authorization for approximately 6.7 percent and 6.5 percent, respectively, of all the customer checks and ACHs we received and we were unable to collect approximately 63 percent and 64 percent, respectively, of these deposited customer checks or presented ACHs." Advance America 2011 10-K. Borrower-level rates of deposited checks were not reported.

[507] *CFPB Online Payday Loan Payments,* at 10-11.

[508] Bureau of Consumer Fin. Prot., *CFPB Study of Overdraft Programs,* at 52 (2013), *http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf*

In addition to incurring NSF fees from a bank, in many cases when a check bounces the consumer can be charged a returned check fee by the lender; late fees are restricted in some but not all States.[510]

Default can also be quite costly for borrowers. These costs vary with the type of loan and the channel through which the borrower took out the loan. As noted, default may come after a lender has made repeated attempts to collect from the borrower's deposit account, such that a borrower may ultimately find it necessary to close the account, or the borrower's bank or credit union may close the account if the balance is driven negative and the borrower is unable for an extended period of time to return the balance to positive. And borrowers of vehicle title loans stand to suffer the greatest harm from default, as it may lead to the repossession of their vehicle. In addition to the direct costs of the loss of an asset, this can seriously disrupt people's lives and put at risk their ability to remain employed.

Default rates on individual payday loans appear at first glance to be fairly low. This figure is three percent in the data the Bureau has analyzed.[511] But because so many borrowers respond to the unaffordability of these loans by reborrowing in sequences of loans rather than by defaulting immediately, a more meaningful measure of default is the share of loan sequences that end in default. The Bureau's data show that, using a 30-day sequence definition, 20 percent of loan sequences end in default. A recent report based on a multi-lender dataset showed similar results, with a 3 percent loan-level default rate and a 16 percent sequence-level default rate.[512]

Other researchers have found similarly high levels of default at the borrower level. One study of Texas borrowers found that 4.7 percent of loans were charged off, while 30 percent of borrowers had a loan charged off in their first year of borrowing.[513]

Default rates on single-payment vehicle title loans are higher than those on storefront payday loans. In the data analyzed by the Bureau, the default rate on all vehicle title loans is 6 percent, and the sequence-level default rate is 33 percent.[514] The Bureau's research suggests that title lenders repossess a vehicle slightly more than half the time when a borrower defaults on a loan. In the data the Bureau has analyzed, three percent of all single-payment vehicle title loans lead to repossession, which represents approximately 50 percent of loans on which the borrower defaulted. At the sequence level, 20 percent of sequences end with repossession. In other words, one in five borrowers is unable to escape debt without losing their car.

Borrowers of all types of covered loans are also likely to be subject to collection efforts. The Bureau observed in its consumer complaint data that from November 2013 through December 2015 approximately 24,000 debt collection complaints had payday loan as the underlying debt. More than 10 percent of the complaints the Bureau has received about debt collection stem from payday loans.[515] These collections efforts can include harmful and harassing conduct such as repeated phone calls from collectors to the borrower's home or place of work, as well as in-person visits to consumers' homes and worksites. Some of this conduct, depending on facts and circumstances, may be illegal. Aggressive calling to the borrower's workplace can put at risk the borrower's employment and jeopardize future earnings. Many of these practices can cause psychological distress and anxiety in borrowers who are already under financial pressure. In addition, the Bureau's enforcement and supervisory examination processes have uncovered evidence of numerous illegal collection practices by payday lenders. These include: Illegal third-party calls; false threats to add new fees; false threats of legal action or referral to a non-existent in-house "collections department"; and deceptive messages regarding non-existent "special promotions" to induce borrowers to return calls.[516]

Even if a vehicle title borrower does not have her vehicle repossessed, the threat of repossession in itself may cause harm to borrowers. It may cause them to forgo other essential expenditures in order to make the payment and avoid repossession.[517] And there may be psychological harm in addition to the stress associated with the possible loss of a vehicle. Lenders recognize that consumers often have a "pride of ownership" in their vehicle and, as discussed above in part II, one or more lenders exceed their maximum loan amount guidelines and consider the vehicle's sentimental or use value to the consumer when assessing the amount of funds they will lend.

The potential impacts of the loss of a vehicle depend on the transportation needs of the borrower's household and the available transportation alternatives. According to two surveys of vehicle title loan borrowers, 15 percent of all borrowers report that they would have no way to get to work or school if they lost their vehicle to repossession.[518] More than one-third (35 percent) of borrowers pledge the title to the only working vehicle in the household (Pew 2015). Even those with a second vehicle or the ability to get rides from friends or take public transportation would presumably experience significant inconvenience or even hardship from the loss of a vehicle.

The Bureau analyzed online payday and payday installments lenders' attempts to withdraw payments from borrowers' deposit accounts, and found that six percent of payment attempts that were not preceded by a failed payment attempt themselves fail.[519] An additional six percent succeed despite a lack of sufficient available funds in the borrower's account because the borrower's depository institution makes the payment as an overdraft, in which case the borrower was also likely charged a similar fee. Default rates are more difficult to determine, but 36 percent of checking accounts with failed online loan payments are subsequently closed. This provides a rough measure of default on these loans, but more importantly demonstrates the harm borrowers suffer in the process of defaulting on these loans.

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[509] *CFPB Online Payday Loan Payments,* at 3; *see generally* Market Concerns—Payments.

[510] Most States limit returned item fees on payday loans to a single fee of $15-$40; $25 is the most common returned-item fee limit. Most States do not permit lenders to charge a late fee on a payday loan, although Delaware permits a late fee of five percent and several States' laws are silent on the question of late fees.

[511] Default here is defined as a loan not being repaid as of the end of the period covered by the data or 30 days after the maturity date of the loan, whichever was later. The default rate was slightly higher, [four percent], for new loans that are not part of an existing loan sequence, which could reflect an intention by some borrowers to take out a loan and not repay, or the mechanical fact that borrowers with a high probability of defaulting for some other reason are less likely to have a long sequence of loans.

[512] nonprime101, *Measure of Reduced Form Relationship between the Payment-Income Ratio and the Default Probability,* at 6 (2015), *https://www.nonprime101.com/wp-content/uploads/2015/02/Clarity-Services-Measure-of-Reduced-Form-Relationship-Final-21715rev.pdf.* This analysis defines sequences based on the pay frequency of the borrower, so some loans that would be considered part of the same sequence using a 30-day definition are not considered part of the same sequence in this analysis.

[513] Skiba & Tobacman, at Table 2. Again, these results are limited to borrowers paid bi-weekly.

[514] *CFPB Single-Payment Vehicle Title Lending,* at 23.

[515] Bureau of Consumer Fin. Prot., *Monthly Complaint Report,* at 12 (March 2016), *http://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-9.pdf.*

[516] *See* Bureau of Consumer Fin. Prot., *Supervisory Highlight,* at 17-19 (Spring 2014), *http://files.consumerfinance.gov/f/201405_cfpb_supervisory-highlights-spring-2014.pdf.*

[517] As the D.C. Circuit observed of consumers loans secured by interests in household goods, "[c]onsumers threatened with the loss of their most basic possessions become desperate and peculiarly vulnerable to any suggested 'ways out.' As a result, 'creditors are in a prime position to urge debtors to take steps which may worsen their financial circumstances.' The consumer may default on other debts or agree to enter refinancing agreements which may reduce or defer monthly payments on a short-term basis but at the cost of increasing the consumer's total long-term debt obligation." *AFSA,* 767 F.2d at 974 (internal citation omitted).

[518] Fritzdixon, *et al.*, at 1029-1030; Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences,* at 14 (2015), *http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

The risk that they will default and the costs associated with default are likely to be under-appreciated by borrowers when obtaining a payday or vehicle title loan. Consumers are unlikely, when deciding whether to take out a loan, to be thinking about what will happen if they were to default or what it will take to avoid default. They may be overly focused on their immediate needs relative to the longer-term picture. The lender's marketing materials may have succeeded in convincing the consumer of the value of a loan to bridge until their next paycheck. Some of the remedies a lender might take, such as repeatedly attempting to collect from a borrower's checking account or using remotely created checks, may be unfamiliar to borrowers. Realizing that this is even a possibility would depend on the borrower investigating what would happen in the case of an event they do not expect to occur, such as a default.

f. Collateral Harms From Making Unaffordable Payments

In addition to the harms associated with delinquency and default, borrowers who take out these loans may experience other financial hardships as a result of making payments on unaffordable loans. These may arise if the borrower feels compelled to prioritize payment on the loan and does not wish to reborrow. This course may result in defaulting on other obligations or forgoing basic living expenses. If a lender has taken a security interest in the borrower's vehicle, for example, the borrower is likely to feel compelled to prioritize payments on the title loan over other bills or crucial expenditures because of the leverage that the threat of repossession gives to the lender.

The repayment mechanisms for other short-term loans can also cause borrowers to lose control over their own finances. If a lender has the ability to withdraw payment directly from a borrower's checking account, especially when the lender is able to time the withdrawal to align with the borrower's payday or the day the borrower receives periodic income, the borrower may lose control over the order in which payments are made and may be unable to choose to make essential expenditures before repaying the loan.

The Bureau is not able to directly observe the harms borrowers suffer from making unaffordable payments. The rates of reborrowing and default on these loans indicate that many borrowers do struggle to repay these loans, and it is therefore reasonable to infer that many borrowers are suffering harms from making unaffordable payments particularly where a leveraged payment mechanism and vehicle security strongly incentivize consumers to prioritize short-term loans over other expenses.

g. Harms Remain Under Existing Regulatory Approaches

Based on Bureau analysis and outreach, the harms the Bureau perceives from payday loans, single-payment vehicle title loans, and other short-term loans persist in these markets despite existing regulatory frameworks. In particular, the Bureau believes that existing regulatory frameworks in those States that have authorized payday and/or vehicle title lending have still left many consumers vulnerable to the specific harms discussed above relating to reborrowing, default, and collateral harms from making unaffordable payments.

Several different factors have complicated State efforts to effectively apply their regulatory frameworks to payday loans and other short-term loans. For example, lenders may adjust their product offerings or their licensing status to avoid State law restrictions, such as by shifting from payday loans to vehicle title or installment loans or open-end credit or by obtaining licenses under State mortgage lending laws.[520] States also have faced challenges in applying their laws to certain online lenders, including lenders claiming tribal affiliation or offshore lenders.[521]

As discussed above in part II, States have adopted a variety of different approaches for regulating payday loans and other short-term loans. For example, fourteen States and the District of Columbia have interest rate caps or other restrictions that, in effect, prohibit payday lending. Although consumers in these States may still be exposed to potential harms from short-term lending, such as online loans made by lenders that claim immunity from these State laws or from loans obtained in neighboring States, these provisions provide strong protections for consumers by substantially reducing their exposure to the harms from payday loans.

The 36 States that permit payday loans in some form have taken a variety of different approaches to regulating such loans. Some States have restrictions on rollovers or other reborrowing. Among other things, these restrictions may include caps on the total number of permissible loans in a given period, or cooling-off periods between loans. Some States prohibit a lender from making a payday loan to a borrower who already has an outstanding payday loan. Some States have adopted provisions with minimum income requirements. For example, some States provide that a payday loan cannot exceed a percentage (most commonly 25 percent) of a consumer's gross monthly income. Some State payday or vehicle title lending statutes require that the lender consider a consumer's ability to repay the loan, though none of them specify what steps lenders must take to determine whether the consumer has the ability to repay a loan. Some States require that consumers have the opportunity to repay a short-term loan through an extended payment plan over the course of a longer period of time. Additionally, some jurisdictions require lenders to provide specific disclosures to alert borrowers of potential risks.

While these provisions may have been designed to target some of the same or similar potential harms identified above, these provisions do not appear to have had a significant impact on reducing reborrowing and other harms that confront consumers of short-term loans. In particular, as discussed above, the Bureau's primary concern for payday loans and other short-term loans is that many consumers end up reborrowing over and over again, turning what was ostensibly a short-term loan into a long-term cycle of debt. The Bureau's analysis of borrowing patterns in different States that permit payday loans indicates that most States have very similar rates of reborrowing, with about 80 percent of loans followed by another loan within 30 days, regardless of the restrictions that are in place.[522] In particular, laws that prevent direct rollovers of loans, as well as laws that impose short cooling-off periods between loans, such as Florida's prohibition on same-day reborrowing, have very little impact on reborrowing rates measured over periods longer than one day. The 30-day reborrowing rate in all States that prohibit rollovers is 80 percent, and in Florida the rate is 89 percent. Several States, however, do stand out as having substantially lower reborrowing rates than other States. These include Washington, which limits borrowers to no more than eight loans in a rolling 12-month period and has a 30-day reborrowing rate of 63 percent, and Virginia, which imposes a minimum loan length of two pay periods and imposes a 45-day cooling off period once a borrower has had [five] loans in a rolling six-month period, and has a 30-day reborrowing rate of 61 percent.

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[519] The bank's analysis includes both online and storefront lenders. Storefront lenders normally collect payment in cash and only deposit checks or submit ACH requests for payment when a borrower has failed to pay in person. These check presentments and ACH payment requests, where the borrower has already failed to make the agreed-upon payment, have a higher rate of insufficient funds.

[520] As discussed in part II, payday lenders in Ohio began making loans under the State's Mortgage Loan Act and Credit Service Organization Act following the 2008 adoption of the Short-Term Lender Act, which limited interest and fees to 28 percent APR among other requirements, and a public referendum the same year voting down the reinstatement of the State's Check-Cashing Lender Law, under which payday lenders had been making loans at higher rates.

[521] For example, a number of States have taken action against Western Sky Financial, a South Dakota-based online lender based on an Indian reservation and owned by a tribal member, online loan servicer CashCall, Inc., and related entities for evading State payday lending laws. A recent report summarizes these legal actions and advisory notices. *See* Diane Standaert & Brandon Coleman, *Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement* (2015), *http://www.responsiblelending.org/payday-lending/research-analysis/crl_payday_enforcement_brief_nov2015.pdf.*

Likewise, the Bureau believes that disclosures are insufficient to adequately reduce the harm that consumers suffer when lenders do not determine consumers' ability to repay, for two primary reasons.[523] First, disclosures do not address the underlying incentives in this market for lenders to encourage borrowers to reborrow and take out long sequences of loans. As discussed above, the prevailing business model in the short-term loan market involves lenders deriving a very high percentage of their revenues from long loan sequences. While enhanced disclosures would provide additional information to consumers, the Bureau believes that the loans would remain unaffordable for most consumers, lenders would have no greater incentive to underwrite more rigorously, and lenders would remain dependent on long-term loan sequences for revenues.

Second, empirical evidence suggests that disclosures have only modest impacts on consumer borrowing patterns for short-term loans generally and negligible impacts on whether consumers reborrow. Evidence from a field trial of several disclosures designed specifically to warn of the risks of reborrowing and the costs of reborrowing showed that these disclosures had a marginal effect on the total volume of payday borrowing.[524] Analysis by the Bureau of similar disclosures implemented by the State of Texas showed a reduction in loan volume of 13 percent after the disclosure requirement went into effect, relative to the loan volume changes for the study period in comparison States.[525] The Bureau believes these findings confirm the limited magnitude of the impacts from the field trial. In addition, analysis by the Bureau of the impacts of the disclosures in Texas shows that the probability of reborrowing on a payday loan declined by only approximately 2 percent once the disclosure was put in place. Together, these findings indicate that high levels of reborrowing and long sequences of payday loans remain a significant source of consumer harm even after a disclosure regime is put into place. Further, as discussed above in Market Concerns—Short-Term Loans, the Bureau has observed that consumers have a very high probability of winding up in a very long sequence once they have taken out only a few loans in a row.[526] The contrast of the very high likelihood that a consumer will wind up in a long-term debt cycle after taking out only a few loans with the near negligible impact of a disclosure on consumer reborrowing patterns provides further evidence of the insufficiency of disclosures to address what the Bureau believes are the core harms to consumers in this credit market.

During the SBREFA process, many of the SERs urged the Bureau to reconsider the proposals under consideration and defer to existing regulation of these credit markets by the States or to model Federal regulation on the laws or regulations of certain States. In the Small Business Review Panel Report, the Panel recommended that the Bureau continue to consider whether regulations in place at the State level are sufficient to address concerns about unaffordable loan payments and that the Bureau consider whether existing State laws and regulations could provide a model for elements of the Federal regulation. The Bureau has examined State laws closely in connection with preparing the proposed rule, as discussed in part II. Moreover, based on the Bureau's data analysis as noted above, the regulatory frameworks in most States do not appear to have had a significant impact on reducing reborrowing and other harms that confront consumers of short-term loans. For these and the other reasons discussed in Market Concerns—Short-Term Loans, the Bureau believes that Federal intervention in these markets is warranted at this time.

Section 1041.4 Identification of Abusive and Unfair Practice—Short-Term Loans

In most consumer lending markets, it is standard practice for lenders to assess whether a consumer has the ability to repay a loan before making the loan. In certain markets, Federal law requires this.[527] The Bureau has not determined whether, as a general rule, it is an unfair or abusive practice for any lender to make a loan without making such a determination. Nor is the Bureau proposing to resolve that question in this rulemaking. Rather, the focus of Subpart B of this proposed rule is on a specific set of loans which the Bureau has carefully studied, as discussed in more detail in part II and Market Concerns—Short-Term Loans. Based on the evidence described in part II and Market Concerns—Short-Term Loans, and pursuant to its authority under section 1031(b) of the Dodd-Frank Act, the Bureau is proposing in § 1041.4 to identify it as both an abusive and an unfair act or practice for a lender to make a covered short-term loan without reasonably determining that the consumer has the ability to repay the loan. "Ability to repay" in this context means that the consumer has the ability to repay the loan without reborrowing and while meeting the consumer's major financial obligations and basic living expenses. The Bureau's preliminary findings with regard to abusiveness and unfairness are discussed separately below. The Bureau is making these preliminary findings based on the specific evidence cited below in the section-by-section analysis of proposed § 1041.4, as well as the evidence discussed in part II and Market Concerns—Short-Term Loans.

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[522] *CFPB Report on Supplemental Findings*, at ch. 4.

[523] *See also* section-by-section analysis of proposed § 1041.7.

[524] Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing and Payday Borrowing*, 66 J. Fin. 1865 (2011), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01698.x/full.*

[525] *See* CFPB Report on Supplemental Findings, at 73.

[526] As discussed above in this Market Concerns—Short-Term Loans, a borrower who takes out a fourth loan in a sequence has a 66 percent likelihood of taking out at least three more loans, for a total sequence length of seven loans, and a 57 percent likelihood of taking out at least six more loans, for a total sequence length of 10 loans.

[527] *See, e.g.,* Dodd-Frank Act section 1411, codified at 15 U.S.C. 1639c(a)(1); CARD Act, 15 U.S.C. 1665e; HPML Rule, 73 FR 44522, at 44543 (July 30, 2008). In addition, the OCC has issued numerous guidance documents about the potential for legal liability and reputational risk connected with lending that does not take account of borrowers' ability to repay. *See* OCC Advisory Letter 2003-3, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans (Feb. 21, 2003), available at *http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf*; FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013); OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 26, 2013).

Abusiveness

Under § 1031(d)(2)(A) and (B) of the Dodd-Frank Act, the Bureau may find an act or practice to be abusive in connection with a consumer financial product or service if the act or practice takes unreasonable advantage of (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service or of (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. It appears to the Bureau that consumers generally do not understand the material risks and costs of taking out a payday, vehicle title, or other short-term loan, and further lack the ability to protect their interests in selecting or using such loans. It also appears to the Bureau that lenders take unreasonable advantage of these consumer vulnerabilities by making loans of this type without reasonably determining that the consumer has the ability to repay the loan.

Consumers Lack an Understanding of Material Risks and Costs

As discussed in Market Concerns—Short-Term Loans, short-term payday and vehicle title loans can and frequently do lead to a number of negative consequences for consumers, which range from extensive reborrowing to defaulting to being unable to pay other obligations or basic living expenses as a result of making an unaffordable payment. All of these—including the direct costs that may be payable to lenders and the collateral consequences that may flow from the loans—are risks or costs of these loans, as the Bureau understands and reasonably interprets that phrase.

The Bureau recognizes that consumers who take out a payday, vehicle title, or other short-term loan understand that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences. The Bureau does not believe, however, that such a generalized understanding suffices to establish that consumers understand the material costs and risks of these products. Rather, the Bureau believes that it is reasonable to interpret "understanding" in this context to mean more than a mere awareness that it is within the realm of possibility that a particular negative consequence may follow or cost may be incurred as a result of using the product. For example, consumers may not understand that a risk is very likely to materialize or that—though relatively rare—the impact of a particular risk would be severe.

As discussed above in Market Concerns—Short-Term Loans, the single largest risk to a consumer of taking out a payday, vehicle title, or similar short-term loan is that the initial loan will lead to an extended cycle of indebtedness. This occurs in large part because the structure of the loan usually requires the consumer to make a lump-sum payment within a short period of time, typically two weeks, or a month, which would absorb such a large share of the consumer's disposable income as to leave the consumer unable to pay the consumer's major financial obligations and basic living expenses. Additionally, in States where it is permitted, lenders often offer borrowers the enticing, but ultimately costly, alternative of paying a smaller fee (such as 15 percent of the principal) and rolling over the loan or making back-to-back repayment and reborrowing transactions rather than repaying the loan in full—and many borrowers choose this option. Alternatively, borrowers may repay the loan in full when due but find it necessary to take out another loan a short time later because the large amount of cash needed to repay the first loan relative to their income leaves them without sufficient funds to meet their other obligations and expenses. This cycle of indebtedness affects a large segment of borrowers: As described in Market Concerns—Short-Term Loans, 50 percent of storefront payday loan sequences contain at least four loans. One-third contain seven loans or more, by which point consumers will have paid charges equal to 100 percent of the amount borrowed and still owe the full amount of the principal. Almost one-quarter of loan sequences contain at least 10 loans in a row. And looking just at loans made to borrowers who are paid weekly, biweekly, or semi-monthly, 21 percent of loans are in sequences consisting of at least 20 loans. For loans made to borrowers who are paid monthly, 46 percent of loans are in sequences consisting of at least 10 loans.

The evidence summarized in Market Concerns—Short-Term Loans also shows that consumers who take out these loans typically appear not to understand when they first take out a loan how long they are likely to remain in debt and how costly that will be for them. Payday borrowers tend to overestimate their likelihood of repaying without reborrowing and underestimate the likelihood that they will end up in an extended loan sequence. For example, one study found that while 60 percent of borrowers predict they would not roll over or reborrow their payday loan, only 40 percent actually did not roll over or reborrow. The same study found that consumers who end up reborrowing numerous times—*i.e.,* the consumers who suffer the most harm—are particularly bad at predicting the number of times they will need to reborrow. Thus, many consumers who expected to be in debt only a short amount of time can find themselves in a months-long cycle of indebtedness, paying hundreds of dollars in fees above what they expected while struggling to repay the original loan amount.

The Bureau has observed similar outcomes for borrowers of single-payment vehicle title loans. For example, 83 percent of vehicle title loans being reborrowed on the same day that a previous loan was due, and 85 percent of vehicle title loans are reborrowed within 30 days of a previous vehicle title loan. Fifty-six percent of vehicle title loan sequences consist of more than three loans, 36 percent consist of at least seven loans, and almost one quarter—23 percent—consist of more than 10 loans. While there is no comparable research on the expectations of vehicle title borrowers, the Bureau believes that the research in the payday context can be extrapolated to these other products given the significant similarities in the product structures, the characteristics of the borrowers, and the outcomes borrowers experience, as detailed in part II and Market Concerns—Short-Term Loans.

Consumers are also exposed to other material risks and costs in connection with covered short-term loans. As discussed in more detail in Market Concerns—Short-Term Loans, the unaffordability of the payments for many consumers creates a substantial risk of default. Indeed, 20 percent of payday loan sequences and 33 percent of title loan sequences end in default. And 69 percent of payday loan defaults occur in loan sequences in which the consumer reborrows at least once. For a payday borrower, the cost of default generally includes the cost of at least one, and often multiple, NSF fees assessed by the borrower's bank when the lender attempts to cash the borrower's postdated check or debit the consumer's account via ACH transfer and the attempt fails. NSFs are associated with a high rate of bank account closures. Defaults also often expose consumers to aggressive debt collection activities by the lender or a third-party debt collector. The consequences of default can be even more dire for a vehicle title borrower, including the loss of the consumer's vehicle—which is the result in 20 percent of single-payment vehicle title loan sequences.

The Bureau does not believe that many consumers who take out payday, vehicle title, or other short-term loans understand the magnitude of these additional risks—for example, that they have at least a one in five (or for auto title borrowers a one in three) chance of defaulting. Nor are payday borrowers likely to factor into their decision on whether to take out the loan the many collateral consequences of default, including expensive bank fees, aggressive collections, or the costs of having to get to work or otherwise from place to place if their vehicle is repossessed.

As discussed in Market Concerns—Short-Term Loans, several factors can impede consumers' understanding of the material risks and costs of payday, vehicle title, and other short-term loans. To begin with, there is a mismatch between how these loans are structured and how they operate in practice. Although the loans are presented as standalone short-term products, only a minority of payday loans are repaid without any reborrowing. These loans often instead produce lengthy cycles of rollovers or new loans taken out shortly after the prior loans are repaid. Empirical evidence shows that consumers are not able to accurately predict how many times they will reborrow, and thus are not able to tell when they take out the first loan how long their cycles will last and how much they will ultimately pay for the initial disbursement of loan proceeds. Even consumers who believe they will be unable to repay the loan immediately and therefore expect some amount of reborrowing are generally unable to predict accurately how many times they will reborrow and at what cost. This is especially true for consumers who reborrow many times.

In addition, consumers in extreme financial distress tend to focus on their immediate liquidity needs rather than potential future costs in a way that makes them particularly susceptible to lender marketing, and payday and vehicle title lenders often emphasize the speed with which the lender will provide funds to the consumer.[528] In fact, numerous lenders select company names that emphasize rapid loan funding. But there is a substantial disparity between how these loans are marketed by lenders and how they are actually experienced by many consumers. While covered short-term loans are marketed as short-duration loans intended for short-term or emergency use only,[529] a substantial percentage of consumers do not repay the loan quickly and thus either default, or, in a majority of the cases, reborrow—often many times. Moreover, consumers who take out covered short-term loans may be overly optimistic about their future cash flow. Such incorrect expectations may lead consumers to misunderstand whether they will have the ability to repay the loan, or to expect that they will be able to repay it after reborrowing only a few times. These consumers may find themselves caught in a cycle of reborrowing that is both very costly and very difficult to escape.

Consumer Inability to Protect Interests

Under section 1031(d)(2)(B) of the Dodd-Frank Act, an act or practice is abusive if it takes unreasonable advantage of the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. Consumers who lack an understanding of the material risks and costs of a consumer financial product or service often will also lack the ability to protect their interests in selecting or using that consumer financial product or service. For instance, as discussed above, the Bureau believes that consumers are unlikely to be able to protect their interests in selecting or using payday, vehicle title, and other short-term loans because they do not understand the material risks and costs associated with these products.

But it is reasonable to also conclude from the structure of section 1031(d), which separately declares it abusive to take unreasonable advantage of consumer lack of understanding or of consumers' inability to protect their interests in using or selecting a product or service that, in some circumstances, consumers may understand the risks and costs of a product, but nonetheless be unable to protect their interests in selecting or using the product. The Bureau believes that consumers who take out an initial payday loan, vehicle title loan, or other short-term loan may be unable to protect their interests in selecting or using such loans, given their immediate need for credit and their inability in the moment to search out or develop alternatives that would either enable them to avoid the need to borrow or to borrow on terms that are within their ability to repay.

As discussed in Market Concerns—Short-Term Loans, consumers who take out payday or short-term vehicle title loans typically have exhausted other sources of credit such as their credit card(s). In the months leading up to their liquidity shortfall, they typically have tried and failed to obtain other forms of credit. Their need is immediate. Moreover, consumers facing an immediate liquidity shortfall may believe that a short-term loan is their only choice; one study found that 37 percent of borrowers say they have been in such a difficult financial situation that they would take a payday loan on any terms offered.[530] They may not have the time or other resources to seek out, develop, or take advantage of alternatives. These factors may place consumers in such a vulnerable position when seeking out and taking these loans that they are potentially unable to protect their interests.

The Bureau also believes that once consumers have commenced a loan sequence they may be unable to protect their interests in the selection or use of subsequent loans. After the initial loan in a sequence has been consummated, the consumer is legally obligated to repay the debt. Consumers who do not have the ability to repay that initial loan are faced with making a choice among three bad options: They can either default on the loan, skip or delay payments on major financial obligations or living expenses in order to repay the loan, or, as is most often the case, take out another loan and soon face the same predicament again. At that point, at least some consumers may gain a fuller awareness of the risks and costs of this type of loan,[531] but by then it may be too late for the consumer to be able to protect her interests. Each of these choices results in increased costs to consumers—often very high and unexpected costs—which harm consumers' interests. An unaffordable first loan can thus ensnare consumers in a cycle of debt from which consumers have no reasonable means to extricate themselves, rendering them unable to protect their interests in selecting or using covered short-term loans.

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[528] In fact, during the SBREFA process for this rulemaking, numerous SERs commented that the Bureau's contemplated proposal would slow the loan origination process and thus negatively impact their business model.

[529] For example, as noted in Market Concerns—Short-Term Loans, the Web site for a national trade association representing storefront payday lenders analogizes a payday loan to a "cost-efficient 'financial taxi' to get from one payday to another when a consumer is faced with a small, short-term cash need."

[530] Pew Charitable Trusts, *How Borrowers Choose and Repay Payday Loans,* at 20 (2013), *http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf.*

Practice Takes Unreasonable Advantage of Consumer Vulnerabilities

Under section 1031(d)(2) of the Dodd-Frank Act, a practice is abusive if it takes unreasonable advantage of consumers' lack of understanding or inability to protect their interests. The Bureau believes that the lender practice of making covered short-term loans without determining that the consumer has the ability to repay may take unreasonable advantage both of consumers' lack of understanding of the material risks, costs, and conditions of such loans, and consumers' inability to protect their interests in selecting or using the loans.

The Bureau recognizes that in any transaction involving a consumer financial product or service there is likely to be some information asymmetry between the consumer and the financial institution. Often, the financial institution will have superior bargaining power as well. Section 1031(d) of the Dodd-Frank Act does not prohibit financial institutions from taking advantage of their superior knowledge or bargaining power to maximize their profit. Indeed, in a market economy, market participants with such advantages generally pursue their self-interests. However, section 1031 of the Dodd-Frank Act makes plain that there comes a point at which a financial institution's conduct in leveraging its superior information or bargaining power becomes unreasonable advantage-taking and thus is abusive.[532]

The Dodd-Frank Act delegates to the Bureau the responsibility for determining when that line has been crossed. The Bureau believes that such determinations are best made with respect to any particular act or practice by taking into account all of the facts and circumstances that are relevant to assessing whether such an act or practice takes unreasonable advantage of consumers' lack of understanding or of consumers' inability to protect their interests. Several interrelated considerations lead the Bureau to believe that the practice of making payday, vehicle title, and other short-term loans without regard to the consumer's ability to repay may cross the line and take unreasonable advantage of consumers' lack of understanding and inability to protect their interests.

The Bureau first notes that the practice of making loans without regard to the consumer's ability to repay stands in stark contrast to the practice of lenders in virtually every other credit market, and upends traditional notions of responsible lending enshrined in safety-and-soundness principles as well as in a number of other laws.[533] The general presupposition of credit markets is that the interests of lenders and borrowers are closely aligned: lenders succeed (*i.e.*, profit) only when consumers succeed (*i.e.*, repay their loan according to its terms). For example, lenders in other markets, including other subprime lenders, typically do not make loans without first making an assessment that consumers have the capacity to repay the loan according to the loan terms. Indeed, "capacity" is one of the traditional three "Cs" of lending and is often embodied in tests that look at debt as a proportion of the consumer's income or at the consumer's residual income after repaying the debt.

In the markets for payday, vehicle title, and similar short-term loans, however, lenders have built a business model that—unbeknownst to borrowers—*depends* upon the consumer's lack of capacity to repay such loans without needing to reborrow. As explained above, the costs of maintaining business operations (which include customer acquisition costs and overhead expenses) often exceed the revenue that could be generated from making individual short-term loans that are repaid without reborrowing. Thus, lenders' business model depends upon a substantial percentage of consumers not being able to repay their loans when due and, instead, taking out multiple additional loans in quick succession. Indeed, upwards of half of all payday and single-payment vehicle title loans are made to—and an even higher percentage of revenue is derived from—borrowers in a sequence of ten loans or more. This dependency on revenue from long-term debt cycles has been acknowledged by industry stakeholders. For example, as noted in Market Concerns—Short-Term Loans, an attorney for a national trade association representing storefront payday lenders asserted in a letter to the Bureau that, "[i]n any large, mature payday loan portfolio, loans to repeat borrowers generally constitute between 70 and 90 percent of the portfolio, and for some lenders, even more."

Also relevant in assessing whether the practice at issue here involves unreasonable advantage-taking is the vulnerability of the consumers seeking these types of loans. As discussed in Market Concerns—Short-Term Loans, payday and vehicle title borrowers—and by extension borrowers of similar short-term loans—generally have modest incomes, little or no savings, and have tried and failed to obtain other forms of credit. They generally turn to these products in times of need as a "last resort," and when the loan comes due and threatens to take a large portion of their income, their situation becomes, if anything, even more desperate.

In addition, the evidence described in Market Concerns—Short-Term Loans suggests that lenders engage in practices that further exacerbate the risks and costs to the interests of consumers. Lenders market these loans as being for use "until next payday" or to "tide over" consumers until they receive income, thus encouraging overly optimistic thinking about how the consumer is likely to use the product. Lender advertising also focuses on immediacy and speed, which may increase consumers' existing sense of urgency. Lenders make an initial short-term loan and then roll over or make new loans to consumers in close proximity to the prior loan, compounding the consumer's initial inability to repay. Lenders make this reborrowing option easy and salient to consumers in comparison to repayment of the full loan principal. Moreover, lenders do not appear to encourage borrowers to reduce the outstanding principal over the course of a loan sequence, which would help consumers extricate themselves from the cycle of indebtedness more quickly and reduce their costs from reborrowing. Storefront lenders in particular encourage loan sequences because they encourage or require consumers to repay in person in an effort to frame the consumer's experience in a way to encourage reborrowing. Lenders often give financial incentives to employees to reward maximizing loan volume.

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[531] However, the Mann study discussed in more detail in Market Concerns—Short-Term Loans suggests that consumers do not, in fact, gain a fuller awareness of the risks and costs of this type of loan the more they use the product. Mann, at 127.

[532] A covered person taking unreasonable advantage of one or more of the three consumer vulnerabilities identified in section 1031(d) of the Dodd-Frank Act in circumstances in which the covered person lacks such superior knowledge or bargaining power may still be an abusive act or practice.

[533] Dodd-Frank Act section 1411, codified at 15 U.S.C. 1639c(a)(1); CARD Act, 15 U.S.C. 1665e; HPML Rule, 73 FR 44522, 44543 (July 30, 2008); OCC Advisory Letter 2003-3, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans (Feb. 21, 2003), available at *http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf*; OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 26, 2013); FDIC Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013).

By not determining that consumers have the ability to repay their loans, lenders potentially take unreasonable advantage of a lack of understanding on the part of the consumer of the material risks of those loans and of the inability of the consumer to protect the interests of the consumer in selecting or using those loans.

Unfairness

Under section 1031(c)(1) of the Dodd-Frank Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidably by consumers and such injury is not outweighed by countervailing benefits to consumers or to competition. Under section 1031(c)(2), the Bureau may consider established public policies as evidence in making this determination. The Bureau believes that it may be an unfair act or practice for a lender to make a covered short-term loan without reasonably determining that the consumer has the ability to repay the loan.

Practice Causes or Is Likely To Cause Substantial Injury

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law.[534] Under these authorities, as discussed in part IV, substantial injury may consist of a small amount of harm to a large number of individuals or a larger amount of harm to a smaller number of individuals. In this case, the practice at issue causes or is likely to cause *both*—a substantial number of consumers suffer a high degree of harm, and a large number of consumers suffer a lower but still meaningful degree of harm.

The Bureau believes that the practice of making a covered short-term loan without assessing the consumer's ability to repay may cause or be likely to cause substantial injury. When a loan is structured to require repayment within a short period of time, the payments may outstrip the consumer's ability to repay since the type of consumers who turn to these products cannot absorb large loan payments on top of their major financial obligations and basic living expenses. If a lender nonetheless makes such loans without determining that the loan payments are within the consumer's ability to repay, then it appears the lender's conduct causes or is likely to cause the injuries described below.

In the aggregate, the consumers who suffer the greatest injury are those consumers who have exceedingly long loan sequences. As discussed above in Market Concerns—Short-Term Loans, consumers who become trapped in long loan sequences pay substantial fees for reborrowing, and they usually do not reduce the principal amount owed when they reborrow. For example, roughly half of payday loan sequences consist of at least three rollovers, at which point, in a typical two-week loan, a storefront payday borrower will have paid over a period of eight weeks charges equal to 60 percent or more of the loan amount—and will still owe the full amount borrowed. Roughly one-third of consumers roll over or renew their loan at least six times, which means that, after three and a half months with a typical two-week loan, the consumer will have paid to the lender a sum equal to 100 percent of the loan amount and made no progress in repaying the principal. Almost one-quarter of loan sequences consist of at least 10 loans in a row, and 50 percent of all loans are in sequences of 10 loans or more. And looking just at loans made to borrowers who are paid weekly, biweekly, or semi-monthly, approximately 21 percent of loans are in sequences consisting of at least 20 loans. For loans made to borrowers who are paid monthly, 42 percent of loans are in sequences consisting of at least 10 loans. In many instances, such consumers also incur bank penalty fees (such as NSF fees) and lender penalty fees (such as late fees and/or returned check fees) before rolling over a loan. Similarly, for vehicle title loans, the Bureau found that more than half, 56 percent, of single-payment vehicle title sequences consist of at least four loans in a row; over a third, 36 percent, consist of seven or more loans in a row; and 23 percent had 10 or more loans.

Moreover, consumers whose loan sequences are shorter may still suffer meaningful injury from reborrowing beyond expected levels, albeit to a lesser degree than those in longer sequences. Even a consumer who reborrows only once or twice—and, as described in Market Concerns—Short-Term Loans, 22 percent of payday and 23 percent of vehicle title loan sequences show this pattern—will still incur substantial costs related to reborrowing or rolling over the loans.

The injuries resulting from default on these loans also appear to be significant in magnitude. As described in section Market Concerns—Short-Term Loans, 20 percent of payday loan sequences end in default, while 33 percent of vehicle title sequences end in default. Because short-term loans (other than vehicle title loans) are usually accompanied by some means of payment collection—typically a postdated check for storefront payday loans and an authorization to submit electronic debits to the consumer's account for online payday loans—a default means that the lender was unable to secure payment despite using those tools. That means that a default is preceded by failed payment withdrawal attempts which generate bank fees (such as NSF fees), that can put the consumer's account at risk and lender fees (such as late fees or returned check fees) which add to the consumer's indebtedness. Additionally, as discussed in Market Concerns—Short-Term Loans, where lenders' attempts to extract money directly from the consumer's account fails, the lender often will resort to other collection techniques, some of which—such as repeated phone calls, in-person visits to homes and worksites, and lawsuits leading to wage garnishments—can inflict significant financial and psychological damage on consumers.[535]

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[534] Over the past several decades, the FTC and Federal banking regulators have promulgated a number of rules addressing acts or practices involving financial products or services that the agencies found to be unfair under the FTC Act (the 1994 amendments to which codified the FTC Policy Statement on Unfairness). For example, in the Credit Practices Rule, the FTC determined that certain features of consumer-credit transactions were unfair, including most wage assignments and security interests in household goods, pyramiding of late charges, and cosigner liability. 49 FR 7740 (Mar. 1, 1984) (codified at 16 CFR 444). The D.C. Circuit upheld the rule as a permissible exercise of unfairness authority. *AFSA*, 767 F.2d at 957. The Federal Reserve Board adopted a parallel rule applicable to banks in 1985. (The Federal Reserve Board's parallel rule was codified in Regulation AA, 12 CFR part 227, subpart B. Regulation AA has been repealed as of March 21, 2016, following the Dodd-Frank Act's elimination of the Federal Reserve Board's rule writing authority under the FTC Act. *See* 81 FR 8133 (Feb. 18, 2016). In 2009, in the HPML Rule, the Federal Reserve Board found that disregarding a consumer's repayment ability when extending a higher-priced mortgage loan or HOEPA loan, or failing to verify the consumer's income, assets, and obligations used to determine repayment ability, is an unfair practice. *See* 73 FR 44522 (July 30, 2008). The Federal Reserve Board relied on rulemaking authority pursuant to TILA section 129(l)(2), 15 U.S.C. 1639(l)(2), which incorporated the provisions of the Home Ownership and Equity Protection Act (HOEPA). The Federal Reserve Board interpreted the HOEPA unfairness standard to be informed by the FTC Act unfairness standard. *See* 73 FR 44522, 44529 (July 30, 2008). That same year, the Federal Reserve Board, the OTS, and the NCUA issued the interagency Subprime Credit Card Practices Rule, in which the agencies concluded that creditors were engaging in certain unfair practices in connection with consumer credit card accounts. *See* 74 FR 5498 (Jan. 29, 2009).

For consumers with a short-term vehicle title loan, the injury from default can be even greater. In such cases lenders do not have access to the consumers' bank account but instead have the ability to repossess the consumer's vehicle. As discussed above, almost one in five vehicle title loan sequences end with the consumer's vehicle being repossessed. Consumers whose vehicles are repossessed may end up either wholly dependent upon public transportation, or family, or friends to get to work, to shop, or to attend to personal needs, or in many areas of the country without any effective means of transportation at all.

Moreover, the Bureau believes that many consumers, regardless of whether they ultimately manage to pay off the loan, suffer collateral consequences as they struggle to make payments that are beyond their ability to repay. For instance, they may be unable to meet their other major financial obligations or be forced to forgo basic living expenses as a result of prioritizing a loan payment and other loan charges—or having it prioritized for them by the lender's exercise of its leveraged payment mechanism.

Injury Not Reasonably Avoidable

As previously noted in part IV, under the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings, and related case law, which inform the Bureau's interpretation and application of the unfairness test, an injury is not reasonably avoidable where "some form of seller behavior . . . unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making," [536] or, put another way, unless consumers have reason to anticipate the injury and the means to avoid it. It appears that, in a significant proportion of cases, consumers are unable to reasonably avoid the substantial injuries caused or likely to be caused by the identified practice. Prior to entering into a payday, vehicle title, or other short-term loan, consumers are unable to reasonably anticipate the likelihood and severity of injuries that frequently results from such loans, and after entering into the loan, consumers do not have the means to avoid the injuries that may result should the loan prove unaffordable.

As discussed above in Market Concerns—Short-Term Loans, a confluence of factors creates obstacles to the free exercise of consumers' decision-making, preventing them from reasonably avoiding injury caused by unaffordable short-term loans. Such loans involve a basic mismatch between how they appear to function as short term credit and how they are actually designed to function in long sequences of reborrowing. Lenders present short-term loans as short-term, liquidity-enhancing products that consumers can use to bridge an income shortfall until their next paycheck. But in practice, these loans often do not operate that way. The disparity between how these loans appear to function and how they actually function creates difficulties for consumers in estimating with any accuracy how long they will remain in debt and how much they will ultimately pay for the initial extension of credit. Consumer predictions are often overly optimistic, and consumers who experience long sequences of loans often do not expect those long sequences when they make their initial borrowing decision. As detailed in Market Concerns—Short-Term Loans, empirical evidence demonstrates that consumer predictions of how long the loan sequence will last tend to be inaccurate, with many consumers underestimating the length of their loan sequence. Consumers are particularly poor at predicting long sequences of loans, and many do not appear to improve the accuracy of their predictions as a result of past borrowing experience.[537]

Likewise, consumers are unable to reasonably anticipate the likelihood and severity of the consequences of being unable to repay the loan. The consequences include, for example, the risk of accumulating numerous penalty fees on their bank account and on their loan, and the risk that their vehicle will be repossessed, leading to numerous direct and indirect costs. The typical consumer does not have the information to understand the frequency with which these adverse consequences do occur or the likelihood of such consequences befalling a typical consumer of such a loan.

In analyzing reasonable avoidability under the FTC Act unfairness standard, the Bureau notes that the FTC and other agencies have at times focused on factors such as the vulnerability of affected consumers,[538] as well as those consumers' perception of the availability of alternative products.[539] Likewise, the Bureau believes that the substantial injury from short-term loans may not be reasonably avoidable in part because of the consumers' precarious financial situation at the time they borrow and their reasonable belief that searching for alternatives will be fruitless and costly. As discussed in part Market Concerns—Short-Term Loans, consumers who take out payday or short-term vehicle title loans typically have tried and failed to obtain other forms of credit before turning to these loans as a "last resort." Thus, based on their prior negative experience with attempting to obtain credit, they may reasonably perceive that alternative options would not be available. Consumers facing an imminent liquidity crisis may also reasonably believe that their situation is so dire that they do not have time to shop for alternatives and that doing so could prove costly.

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[535] As noted in part IV (Legal Authority), the D.C. Circuit held that psychological harm can form part of the substantial injury along with financial harm. *See AFSA,* 767 F.2d at 973-74, n.20.

[536] FTC Policy Statement on Unfairness, 104 FTC at 1074.

[537] As noted in Market Concerns—Short-Term Loans, it appears that some consumers are able to accurately predict that they will need to reborrow one or two times, but decide to take the loan out regardless of the additional cost of one or two additional loans. Accordingly, such costs do not count as substantial injury that is not reasonably avoidable.

[538] *See, e.g.,* FTC Policy Statement on Unfairness, 104 FTC at 1074 (noting that the FTC may consider the "exercise [of] undue influence over highly susceptible classes of purchasers"); Mortgage Assistance Relief Services Rule, 75 FR 75092, 75117 (Dec. 1, 2010) (emphasizing the "financially distressed" condition of consumers "who often are desperate for any solution to their mortgage problems and thus are vulnerable to providers' purported solutions"); Telemarketing Sales Rule, 75 FR 48458, 48487 (Aug. 10, 2010) (concluding that injury from debt relief programs was not reasonably avoidable in part because "purchasers of debt relief services typically are in serious financial straits and thus are particularly vulnerable" to the "glowing claims" of service providers); Funeral Industry Practices Rule, 47 FR 42260, 42262 (Sept. 24, 1982) (citing characteristics which place the consumer in a disadvantaged bargaining position relative to the funeral director, leaving the consumer vulnerable to unfair and deceptive practices, and causing consumers to have little knowledge of legal requirements and available alternatives). The Funeral Industry Practices Rule and amendments were upheld in the Fourth and Third Circuits. *See Harry and Bryant Co.* v. *FTC,* 726 F.2d 993 (4th Cir. 1984); *Pennsylvania Funeral Directors Ass'n, Inc.* v. *FTC,* 41 F.3d 81 (3d Cir. 1994). In the Subprime Credit Card Practices Rule—in which three Federal banking regulators identified as unfair certain practices being routinely followed by credit card issuers—the Federal Reserve Board, OTS, and NCUA noted their concern that subprime credit cards "are typically marketed to vulnerable consumers whose credit histories or other characteristics prevent them from obtaining less expensive credit products." 74 FR 5498, 5539 (Jan. 29, 2009).

[539] In the HPML Rule, the Federal Reserve Board discussed how subprime consumers "accept loans knowing they may have difficulty affording the payments because they reasonably believe a more affordable loan will not be available to them," how "taking more time to shop can be costly, especially for the borrower in a financial pinch," and how because of these factors "borrowers often make a reasoned decision to accept unfavorable terms." 73 FR 44522, 44542 (July 30, 2008).

Not only are consumers unable to reasonably anticipate potential harms before entering into a payday, vehicle title, or other short-term loan, once they have entered into a loan, they do not have the means to avoid the injuries should the loan prove unaffordable. Consumers who obtain a covered short-term loan beyond their ability to repay face three options: Either reborrow, default, or repay the loan but defer or skip payments on their major financial obligations and for basic living expenses. In other words, for a consumer facing an unaffordable payment, some form of substantial injury is almost inevitable regardless of what actions are taken by the consumer. And as discussed above, lenders engage in a variety of practices that further increase the degree of harm, for instance by encouraging additional reborrowing even among consumers who are already experiencing substantial difficulties and engaging in payment collection practices that are likely to cause consumers to incur substantial additional fees beyond what they already owe.

Injury Not Outweighed by Countervailing Benefits to Consumers or to Competition

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law. Under those authorities, it generally is appropriate for purposes of the countervailing benefits prong of the unfairness standard to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice, but the determination does not require a precise quantitative analysis of benefits and costs.

It appears to the Bureau that the current practice of making payday, vehicle title, and other short-term loans without determining that the consumer has the ability to repay does not result in benefits to consumers or competition that outweigh the substantial injury that consumers cannot reasonably avoid. As discussed above, the amount of injury that is caused by the unfair practice, in the aggregate, appears to be extremely high. Although some individual consumers may be able to avoid the injury, as noted above, a significant number of consumers who end up in very long loan sequences can incur extremely severe financial injuries that were not reasonably avoidable. Moreover, some consumers whose short-term loans become short- to medium-length loan sequences incur various degrees of injury ranging from modest to severe depending on the particular consumer's circumstances (such as the specific loan terms, whether and how much the consumer expected to reborrow, and the extent to which the consumer incurred collateral harms from making unaffordable payments). In addition, many borrowers also experience substantial injury that is not reasonably avoidable as a result of defaulting on a loan or repaying a loan but not being able to meet other obligations and expenses.

Against this very significant amount of harm, the Bureau must weigh several potential countervailing benefits to consumers or competition of the practice in assessing whether it is unfair. The Bureau believes it is helpful to divide consumers into several groups of different borrowing experiences when analyzing whether the practice of extending covered short-term loans without determining that the consumer has the ability to repay yields countervailing benefits to consumers.

The first group consists of borrowers who repay their loan without reborrowing. The Bureau refers to these borrowers as "repayers" for purposes of this countervailing benefits analysis. As discussed in Market Concerns—Short-Term Loans, 22 percent of payday loan sequences and 12 percent of vehicle title loan sequences end with the consumer repaying the initial loan in a sequence without reborrowing. Many of these consumers may reasonably be determined, before getting a loan, to have the ability to repay their loan, such that the ability-to-repay requirement in proposed § 1041.5 would not have a significant impact on their eligibility for this type of credit. At most, it would reduce somewhat the speed and convenience of applying for a loan under the current practice. Under the status quo, the median borrower lives five miles from the nearest payday store. Consumers generally can obtain payday loans simply by traveling to the store and showing a paystub and evidence of a checking account; online payday lenders may require even less. For vehicle title loans, all that is generally required is that the consumer owns their vehicle outright without any encumbrance.

As discussed in more detail in part VI, there could be a significant contraction in the number of payday stores if lenders were required to assess consumers' ability to pay in the manner required by the proposal, but the Bureau projects that 93 to 95 percent of borrowers would not have to travel more than five additional miles. Lenders likely would require more information and documentation from the consumer. Indeed, under the proposed rule consumers may be required in certain circumstances to provide documentation of their income for a longer period of time than their last paystub and may be required to document their rental expenses. Consumers would also be required to complete a written statement with respect to their expected future income and major financial obligations.

Additionally, when a lender makes a loan without determining a consumer's ability to repay, the lender can make the loan instantaneously upon obtaining a consumer's paystub or vehicle title. In contrast, if lenders assessed consumers' ability to repay, they might secure extrinsic data, such as a consumer report from a national consumer reporting agency, which could slow the process down. Indeed, under the proposed rule lenders would be required to review the consumer's borrowing history using the lender's own records and a report from a registered information system, and lenders would also be required to review a credit report from a national credit reporting agency. Using this information, along with verified income, lenders would have to project the consumer's residual income.

As discussed below in the section-by-section analysis of proposed § 1041.5, the proposed rule has been designed to enable lenders to obtain electronic income verification, to use a model to estimate rental expenses, and to automate the process of securing additional information and assessing the consumer's ability to repay. If the proposed ability-to-repay requirements are finalized, the Bureau anticipates that consumers who are able to demonstrate the ability to repay under proposed § 1041.5 would be able to obtain credit to a similar extent as they do in the current market. While the speed and convenience fostered by the current practice may be reduced for these consumers under the proposed rule's requirements, the Bureau does not believe that the proposed requirements will be overly burdensome in this respect. As described in part VI, the Bureau estimates that the required ability-to-repay determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system.

While the Bureau believes that most repayers would be able to demonstrate the ability to repay under proposed § 1041.5, the Bureau recognizes that there is a sub-segment of repayers who could not demonstrate their ability to repay if required to do so by a lender. For them, the current lender practice of making loans without determining their ability to repay enables these consumers to obtain credit that, by hypothesis, may actually be within their ability to repay. The Bureau acknowledges that for this group of "false negatives" there may be significant benefits of being able to obtain covered loans without having to demonstrate their ability to repay in the way prescribed by proposed § 1041.5.

However, the Bureau believes that under the proposed rule lenders will generally be able to identify consumers who are able to repay and that the size of any residual "false negative" population will be small. This is especially true to the extent that this class of consumers is disproportionately drawn from the ranks of those whose need to borrow is driven by a temporary mismatch in the timing between their income and expenses rather than those who have experienced an income or expense shock or those with a chronic cash shortfall. It is very much in the interest of these borrowers to attempt to demonstrate their ability to repay in order to receive the loan and for the same reason lenders will have every incentive to err on the side of finding such an ability. Moreover, even if these consumers could not qualify for the loan they would have obtained absent an ability-to-pay requirement, they may still be able to get different credit within their demonstrable ability to repay, such as a smaller loan or a loan with a longer term.[540] For these reasons, the Bureau does not believe that there would be a large false negative population if lenders made loans only to those with the ability to repay.

Finally, some of the repayers may not actually be able to afford the loan, but choose to repay it nonetheless, rather than reborrow or default—which may result in their incurring costs in connection with another obligation, such as a late fee on a utility bill. Such repayers would not be able to obtain under proposed § 1041.5 the same loan that they would have obtained absent an ability-to-repay requirement, but any benefit they receive under the current practice would appear to be small, at most.

The second group consists of borrowers who eventually default on their loan, either on the first loan or later in a loan sequence after having reborrowed. The Bureau refers to these borrowers as "defaulters" for purposes of this countervailing benefits analysis. As discussed in Market Concerns—Short-Term Loans, borrowers of 20 percent of payday and 33 percent of vehicle title loan sequences fall within this group. For these consumers, the current lender practice of making loans without regard to their ability to repay may enable them to obtain what amounts to a temporary "reprieve" from their current situation. They can obtain some cash which may enable them to pay a current bill or current expense. However, for many consumers, the reprieve can be exceedingly short-lived: 31 percent of payday loan sequences that default are single loan sequences, and an additional 27 percent of loan sequences that default are two or three loans long (meaning that 58 percent of defaults occur in loan sequences that are one, two, or three loans long). Twenty-nine percent of single-payment vehicle title loan sequences that default are single loan sequences, and an additional 26 percent of loan sequences that default are two or three loans long.

These consumers thus are merely substituting a payday lender or vehicle title lender for a preexisting creditor, and in doing so, end up in a deeper hole by accruing finance charges, late fees, or other charges at a high rate. Vehicle title loans can have an even more dire consequence for defaulters: 20 percent have their vehicle repossessed. The Bureau thus does not believe that defaulters obtain benefits from the current lender practice of not determining ability to repay.[541]

The final and largest group of consumers consists of those who neither default nor repay their loans without reborrowing but who, instead, reborrow before eventually repaying. The Bureau refers to consumers with such loan sequences as "reborrowers" for purposes of this countervailing benefits discussion. These consumers represent 58 percent of payday loan sequences and 56 percent of auto title loan sequences. For these consumers, as for the defaulters, the practice of making loans without regard to their ability to repay enables them to obtain a temporary reprieve from their current situation. But for this group, that reprieve can come at a greater cost than initially expected, sometimes substantially greater.

Some reborrowers are able to end their borrowing after a relatively small number of additional loans; for example, approximately 22 percent of payday loan sequences and 23 percent of vehicle title loan sequences are repaid after the initial loan is reborrowed once or twice. But even among this group, many consumers do not anticipate before taking out a loan that they will need to reborrow. These consumers cannot reasonably avoid their injuries, and while their injuries may be somewhat less severe than the injuries suffered by consumers with extremely long loan sequences, their injuries can nonetheless be substantial, particularly in light of their already precarious finances. Conversely, some of these consumers may expect to reborrow and may accurately predict how many times they will have to reborrow. For consumers who accurately predict their reborrowing, the Bureau is not counting their reborrowing costs as substantial injury that should be placed on the "injury" side of the countervailing benefits scale.

While some reborrowers end their borrowing after a relatively small number of additional loans, a large percentage of reborrowers end up in significantly longer loan sequences. Of storefront payday loan sequences, for instance, one-third percent contain seven or more loans, meaning that consumers pay finance charges equal to or greater than 100 percent of the amount borrowed. About a quarter percent of loan sequences contain 10 or more loans in succession. For vehicle title borrowers, the picture is similarly dramatic: Only 23 percent of loan sequences taken out by vehicle title reborrowers are repaid after two or three successive loans whereas 23 percent of sequences are for 10 or more loans in succession. The Bureau does not believe any significant number of consumers anticipate such lengthy sequences.

Thus, the Bureau believes that the substantial injury suffered by the defaulters and reborrowers—the categories that represent the vast majority of overall short-term payday and vehicle title borrowers—dwarfs any benefits these groups of borrowers may receive in terms of a temporary reprieve and also dwarfs the speed and convenience benefits that the repayers may experience. The Bureau acknowledges that any benefits derived by the aforementioned "false negatives" may be reduced under the proposed rule, but the Bureau believes that the benefits this relatively small group receives is outweighed by the substantial injuries to the defaulters and reborrowers as discussed above. Further, the Bureau believes that under the proposed intervention, many of these borrowers may find more sustainable options, such as underwritten credit on terms that are tailored to their budget and more affordable.

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[540] Moreover, consumers who cannot or do not want to attempt to demonstrate and ability to repay may be able to take out a loan under proposed § 1041.7. For the purpose of this countervailing benefits analysis, however, the Bureau is not relying on the fact that consumers who cannot demonstrate an ability to repay may be able to take out a loan under proposed § 1041.7.

[541] The Bureau recognizes that defaulters may not default because they lack the ability to repay, but the Bureau believes that the percentage of consumers who default despite having the ability to repay the loan is small. Moreover, any benefit such borrowers derive from the loan would not be diminished by proposed § 1041.5 precisely because they have the ability to repay the loans.

Turning to benefits of the practice for competition, the Bureau acknowledges, as discussed further in part II, that the current practice of lending without regard to consumers' ability to repay has enabled the payday industry to build a business model in which 50 percent or more of the revenue comes from consumers who borrow 10 or more times in succession. This, in turn, has enabled a substantial number of firms to extend such loans from a substantial number of storefront locations. As discussed in part II, the Bureau estimates that the top ten storefront payday lenders control only about half of the market, and that there are 3,300 storefront payday lenders that are small entities as defined by the SBA. The Bureau also acknowledges that, as discussed above and further in part VI, the anticipated effect of limiting lenders to loans that consumers can afford to repay will be to substantially shrink the number of loans per consumer which may, in turn, result in a more highly concentrated markets in some geographic areas. Moreover, the current practice enables to lenders to avoid the procedural costs that the proposed rule would impose.

However, the Bureau does not believe the proposed rule will reduce the competitiveness of the payday or vehicle title markets. As discussed in part II, most States in which such lending takes place have established a maximum price for these loans. Although in any given State there are a large number of lenders making these loans, typically in close proximity to one another, research has shown that there is generally no meaningful price competition among these firms. Rather, in general, the firms currently charge the maximum price allowed in any given State. Lenders who operate in multiple States generally vary their prices from State to State to take advantage of whatever local law allows. Thus, for example, lenders operating in Florida are permitted to charge $10 per $100 loaned,[542] and those same lenders, when lending in South Carolina, charge $15 per $100.[543]

In sum, it appears that the benefits of the identified unfair practice for consumers and competition do not outweigh the substantial, not reasonably avoidable injury caused or likely to be cause by the practice. On the contrary, it appears that the very significant injury caused by the practice outweighs the relatively modest benefits of the practice to consumers.

Consideration of Public Policy

Section 1031(c)(2) of the Dodd-Frank Act allows the Bureau to "consider established public policies as evidence to be considered with all other evidence" in determining whether a practice is unfair as long as the public policy considerations are not the primary basis of the determination. In addition to the evidence described above and in Market Concerns—Short-Term Loans, established public policy supports the proposed finding that it is an unfair act or practice for lenders to make covered short-term loans without determining that the consumer has the ability to repay.

Specifically, as noted above, several consumer financial statutes, regulations, and guidance documents require or recommend that covered lenders assess their customers' ability to repay before extending credit. These include the Dodd-Frank Act with regard to closed-end mortgage loans,[544] the CARD Act with regard to credit cards,[545] guidance from the OCC on abusive lending practices,[546] guidance from the FDIC on small dollar lending,[547] and guidance from the OCC[548] and FDIC[549] on deposit advance products. In addition, the Federal Reserve Board promulgated a rule requiring an ability-to-repay determination regarding higher priced mortgages, although that rule has since been superseded by the Dodd-Frank Act's ability-to-repay requirement and its implementation regulations which apply generally to mortgages regardless of price.[550] In short, Congress, State legislatures,[551] and other agencies have found consumer harm to result from lenders failing to determine that consumer have the ability to repay credit. These established policies support a finding that it is unfair for a lender to make covered short-term loans without determining that the consumer has the ability to repay, and evince public policy that supports the Bureau's proposed imposition of the consumer protections in proposed part 1041. The Bureau gives weight to this policy and bases its proposed finding that the identified practice is unfair, in part, on this significant body of public policy.

The Bureau seeks comment on the evidence and proposed findings and conclusions in proposed § 1041.4 and Market Concerns—Short-Term Loans above. As discussed further below in connection with proposed § 1041.7, the Bureau also seeks comment on whether making loans with the types of consumer protections contained in proposed § 1041.7(b) through (e) should not be included in the practice identified in proposed § 1041.4.

Section 1041.5 Ability-To-Repay Determination Required

As discussed in the section-by-section analysis of § 1041.4 above, the Bureau has tentatively concluded that it is an unfair and abusive act or practice to make a covered short-term loan without reasonably determining that the consumer will have the ability to repay the loan. Section 1031(b) of the Dodd-Frank Act provides that the Bureau's rules may include requirements for the purpose of preventing unfair or abusive acts or practices. The Bureau is proposing to prevent the abusive and unfair practice by including in proposed §§ 1041.5 and 1041.6 minimum requirements for how a lender may reasonably determine that a consumer has the ability to repay a covered short-term loan.

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[542] Fla. Stat. Ann. § 560.404(6).

[543] S.C. Code § 34-39-180(E).

[544] Dodd-Frank Act section 1411, codified at 15 U.S.C. 1639c(a)(1) ("no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.").

[545] 15 U.S.C. 1665e (credit card issuer must "consider[ ] the ability of the consumer to make the required payments").

[546] OCC Advisory Letter 2003-3, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans (Feb. 21, 2003), available at *http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf* (cautioning banks not to extend credit without first determining that the consumer has the ability to repay the loan).

[547] FDIC Financial Institution Letter FIL-50-2007, Affordable Small-Dollar Loan Guidelines (June 19, 2007).

[548] OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624, 70629 (Nov. 26, 2013) ("Deposit advance loans often have weaknesses that may jeopardize the liquidation of the debt. Customers often have limited repayment capacity. A bank should adequately review repayment capacity to assess whether a customer will be able to repay the loan without needing to incur further deposit advance borrowing.").

[549] FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013) (same as OCC guidance).

[550] Higher-Priced Mortgage Loan Rule, 73 FR 44522, 44543 (July 30, 2008) ("the Board finds extending higher-priced mortgage loans or HOEPA loans based on the collateral without regard to the consumer's repayment ability to be an unfair practice. The final rule prohibits this practice.").

[551] *See, e.g.,* 815 Ill. Comp. Stat. Ann. 137/20 (lender must assess ATR in making "high risk home loan"); Nev. Rev. Stat. Ann. § 598D.100 (it is unfair practice to make home loan without determining ATR); Tex. Educ. Code Ann. § 52.321 (state board will set standards for student-loan applicants based in part on ATR).

Proposed § 1041.5 sets forth the prohibition against making a covered short-term loan (other than a loan that satisfies the protective conditions in proposed § 1041.7) without first making a reasonable determination that the consumer will have the ability to repay the covered short term loan according to its terms. It also, in combination with proposed § 1041.6, specifies minimum elements of a baseline methodology that would be required for determining a consumer's ability to repay, using a residual income analysis and an assessment of the consumer's prior borrowing history. In crafting the baseline ability-to-repay methodology established in proposed §§ 1041.5 and 1041.6, the Bureau is attempting to balance carefully several considerations, including the need for consumer protection, industry interests in regulatory certainty and manageable compliance burden, and preservation of access to credit.

Proposed § 1041.5 would generally require the lender to make a reasonable determination that a consumer will have sufficient income, after meeting major financial obligations, to make payments under a prospective covered short-term loan and to continue meeting basic living expenses. However, based on feedback from a wide range of stakeholders and its own internal analysis, as well as the Bureau's belief that consumer harm has resulted despite more general standards in State law, the Bureau believes that merely establishing such a general requirement would provide insufficient protection for consumers and insufficient certainty for lenders.

Many lenders have informed the Bureau that they conduct some type of underwriting on covered short-term loans and assert that it should be sufficient to meet the Bureau's standards. However, as discussed above, such underwriting often is designed to screen primarily for fraud and to assess whether the lender will be able to extract payments from the consumer. It typically makes no attempt to assess whether the consumer might be forced to forgo basic necessities or to default on other obligations in order to repay the covered loan. Moreover, such underwriting essentially treats reborrowing as a neutral or positive outcome, rather than as a sign of the consumer's distress, because reborrowing does not present a risk of loss or decreased profitability to the lender. On the contrary, new fees from each reborrowing contribute to the lender's profitability. In the Bureau's experience, industry underwriting typically goes no further than to predict the consumer's *propensity* to repay rather than the consumer's *financial capacity* (*i.e.,* ability) to repay consistent with the consumer's other obligations and need to cover basic living expenses. Such underwriting ignores the fact that repayment may force the consumer to miss other obligations or to be unable to cover basic living expenses.

The Bureau believes that to prevent the abusive and unfair practices that appear to be occurring in the market, it would be appropriate not only to require lenders to make a reasonable determination of a consumer's ability to repay before making a covered short term loan but also to specify minimum elements of a baseline methodology for evaluating consumers' individual financial situations, including their borrowing history. The baseline methodology is not intended to be a substitute for lender screening and underwriting methods, such as those designed to screen out fraud or predict and avoid other types of lender losses. Accordingly, lenders would be permitted to supplement the baseline methodology with other underwriting and screening methods.

The baseline methodology in proposed § 1041.5 rests on a residual income analysis—that is, an analysis of whether, given the consumer's projected income and major obligations, the consumer will have sufficient remaining (*i.e.,* residual) income to cover the payments on the proposed loan and still meet basic living expenses. The Bureau recognizes that in other markets and under other regulatory regimes financial capacity is more typically measured by establishing a maximum debt-to-income (DTI) ratio.[552] DTI tests generally rest on the assumption that so long as a consumer's debt burden does not exceed a certain threshold percentage of the consumer's income, the remaining share of income will be sufficient for a consumer to be able meet non-debt obligations and other expenses. However, for low- and moderate-income consumers, the Bureau believes that assumption is less likely to be true: A DTI ratio that might seem quite reasonable for the "average" consumer can be quite unmanageable for a consumer at the lower end of the income spectrum and the higher end of the debt burden range.[553] Ultimately, whether a particular loan is affordable will depend upon how much money the consumer will have left after paying existing obligations and whether that amount is sufficient to cover the proposed new obligation while still meeting basic living expenses.

In addition, in contrast with other markets in which there are long-established norms for DTI levels that are consistent with sustainable indebtedness, the Bureau does not believe that there exist analogous norms for sustainable DTI levels for consumers taking covered short-term loans. Thus, the Bureau believes that residual income is a more direct test of ability to repay than DTI and a more appropriate test with respect to the types of products covered in this rulemaking and the types of consumers to whom these loans are made.

The Bureau has designed the residual income methodology requirements specified in proposed §§ 1041.5 and 1041.6 in an effort to ensure that ability-to-repay determinations can be made through scalable underwriting models. The Bureau is proposing that the most critical inputs into the determination rest on documentation but the Bureau's proposed methodology would allow for various means of documenting major financial obligations and also establishes alternatives to documentation where appropriate. It recognizes that rent, in particular, often cannot be readily documented and therefore would allow for estimation of rental expense. See the section-by-section analysis of § 1041.5(c)(3)(ii)(D), below. The Bureau's proposed methodology also would not mandate verification or detailed analysis of every individual consumer expenditure. The Bureau believes that such detailed analysis may not be the only method to prevent unaffordable loans and is concerned that it would substantially increase costs to lenders and borrowers. See the discussion of basic living expenses, below.

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[552] For example, DTI is an important component of the Bureau's ability to repay regulation for mortgages in 12 CFR 1026.43. It is a factor that a creditor must consider in determining a consumer's ability to repay and also a component of the standards that a residential mortgage loan must meet to be a qualified mortgage under that regulation.

[553] For example, under the Bureau's ability-to-repay requirements for residential mortgage loans, a qualified mortgage results in a DTI ratio of 43 percent or less. But for a consumer with a DTI ratio of 43 percent and low income, the 57 percent of income not consumed by payments under debt obligations is unlikely to indicate the same capacity to handle a new loan payment of a given dollar amount, compared to consumers with the same DTI and higher income. That is especially true if the low income consumer also faces significant non-debt expenses, such as high rent payments, that consume significant portions of the remaining 57 percent of her income.

Finally, the Bureau's proposed methodology would not dictate a formulaic answer to whether, in a particular case, a consumer's residual income is sufficient to make a particular loan affordable. Instead, the proposed methodology would allow lenders to exercise discretion in arriving at a reasonable determination with respect to that question. Because this type of underwriting is so different from what many lenders currently engage in, the Bureau is particularly conscious of the need to leave room for lenders to innovate and refine their methods over time, including by building automated systems to assess a consumer's ability to repay so long as the basic elements are taken into account.

Proposed § 1041.5 outlines the methodology for assessing the consumer's residual income as part of the assessment of ability to repay. Proposed § 1041.5(a) would set forth definitions used throughout proposed §§ 1041.5 and 1041.6. Proposed § 1041.5(b) would establish the requirement for a lender to determine that a consumer will have the ability to repay a covered short-term loan and would set forth minimum standards for a reasonable determination that a consumer will have the ability to repay such a covered loan. The standards in proposed § 1041.5(b) would generally require a lender to determine that the consumer's income will be sufficient for the consumer to make payments under a covered short-term loan while accounting for the consumer's payments for major financial obligations and the consumer's basic living expenses. Proposed § 1041.5(c) would establish standards for verification and projections of a consumer's income and major financial obligations on which the lender would be required to base its determination under proposed § 1041.5. Proposed § 1041.6 would impose certain additional presumptions, prohibitions, and requirements where the consumer's reborrowing during the term of the loan or shortly after having a prior loan outstanding suggests that the prior loan was not affordable for the consumer, so that the consumer may have particular difficulty in repaying a new covered short-term loan with similar repayment terms.

In explaining the requirements of the various provisions of proposed § 1041.5, the Bureau is mindful that substantially all of the loans being made today which would fall within the definition of covered short-term loans are single-payment loans, either payday loans or single-payment vehicle title loans. The Bureau recognizes, however, that the definition of covered short-term loan could encompass loans with multiple payments and a term of 45 days or less, for example, a 30-day loan payable in two installments. Accordingly, in the discussion that follows, the Bureau generally refers to payments in the plural and uses phrases such as the "highest payment due." For most covered short-term loans the highest payment would be the only payment and the determinations required by proposed § 1041.5 would be made only for a single payment and the 30 days following such payment.

As an alternative to the proposed ability-to-repay requirement, the Bureau considered whether lenders should be required to provide disclosures to borrowers warning them of the costs and risks of reborrowing, default, and collateral harms from unaffordable payments associated with taking out covered short-term loans. However, the Bureau believes that such a disclosure remedy would be significantly less effective in preventing the consumer harms described above, for three reasons.

First, disclosures do not address the underlying incentives in this market for lenders to encourage borrowers to reborrow and take out long sequences of loans. As discussed in Market Concerns—Short-Term Loans, the prevailing business model involves lenders deriving a very high percentage of their revenues from long loan sequences. While enhanced disclosures would provide additional information to consumers, the loans would remain unaffordable for consumers, lenders would have no greater incentive to underwrite more rigorously, and lenders would remain dependent on long-term loan sequences for revenues.

Second, empirical evidence suggests that disclosures have only modest impacts on consumer borrowing patterns for short-term loans generally and negligible impacts on whether consumers reborrow. Evidence from a field trial of several disclosures designed specifically to warn of the risks of reborrowing and the costs of reborrowing showed that these disclosures had a marginal effect on the total volume of payday borrowing.[554] Further, the Bureau has analyzed the impacts of the change in law in Texas (effective January 1, 2012) requiring payday lenders and short-term vehicle title lenders to provide a new disclosure to prospective borrowers before each payday loan transaction.[555] The Bureau observed that with respect to payday loan transactions, using the Bureau's supervisory data, there was an overall 13 percent decline in loan volume in Texas after the disclosure requirement went into effect, relative to the loan volume changes for the study period in comparison States.[556] The Bureau's analysis of the impacts of the Texas disclosures also shows that the probability of reborrowing on a payday loan declined by approximately 2 percent once the disclosure was put in place.[557] This finding indicates that high levels of reborrowing and long sequences of payday loans remain a significant source of consumer harm even with a disclosure regime in place.[558] Further, as discussed in Market Concerns—Short-Term Loans, the Bureau has observed that borrowers have a very high probability of winding up in a very long sequence once they have taken out only a few loans in a row. The contrast of the extremely high likelihood that a consumer will wind up in a long-term debt cycle after taking out only a few loans with the near negligible impact of a disclosure on consumer reborrowing patterns provides further evidence of the insufficiency of disclosures to address what the Bureau believes are the core harms to consumers in this credit market.

Third, as discussed in part VI, the Bureau believes that behavioral factors make it likely that disclosures to consumers taking out covered short-term loans would be ineffective in warning consumers of the risks and preventing the harms that the Bureau seeks to address with the proposal. Due to the potential for tunneling in their decision-making and general optimism bias, as discussed in more detail in Market Concerns—Short-Term Loans, consumers are likely to dismiss warnings of possible negative outcomes as not applying to them, and to not focus on disclosures of the possible harms associated with outcomes—reborrowing and default—that they do not anticipate experiencing themselves. To the extent the borrowers have thought about the likelihood that they themselves will reborrow or default (or both) on a loan, a general warning about how often people reborrow or default (or both) is unlikely to cause them to revise their own expectations about the chances they themselves will reborrow or default (or both).

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[554] Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing and Payday Borrowing*, 66 J. Fin. 1865, 1866 (2011), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01698.x/full.*

[555] *See* chapter 3 of the CFPB Report on Supplemental Findings.

[556] *See* CFPB Report on Supplemental Findings, at 73.

[557] *See* CFPB Report on Supplemental Findings, at 78-79.

[558] The empirical data suggests that the modest loan volume reductions are primarily attributable to reductions in originations; once a borrower has taken out the initial loan, the disclosure has very little impact.

The Bureau requests comment on the appropriateness of all aspects of the proposed approach. For example, the Bureau requests comment on whether a simple prohibition on making covered short-term loans without determining ability to repay, without specifying the elements of a minimum baseline methodology, would provide adequate protection to consumers and clarity to industry about what would constitute compliance. Similarly, the Bureau requests comment on the adequacy of a less prescriptive requirement for lenders to "consider" specified factors, such as payment amount under a covered short-term loan, income, debt service payments, and borrowing history, rather than a requirement to determine that residual income is sufficient. (Such an approach could be similar to that of the Bureau's ability-to-repay requirements for residential mortgage loans.) Specifically, the Bureau requests comment on whether there currently exist sufficient norms around the levels of such factors that are and are not consistent with a consumer's ability to repay, such that a requirement for a lender to "consider" such factors would provide adequate consumer protection, as well as adequate certainty for lenders regarding what determinations of ability to repay would and would not reflect sufficient consideration of those factors.

Also during outreach, some stakeholders suggested that the Bureau should adopt underwriting rules of thumb—for example, a maximum payment-to-income (PTI) ratio—to either presumptively or conclusively demonstrate compliance with the rule. The Bureau solicits comment on whether the Bureau should define such rules of thumb and, if so, what metrics should be included in a final rule and what significance should be given to such metrics.

5(a) Definitions

Proposed § 1041.5(a) would provide definitions of several terms used in proposed § 1041.5 in assessing the consumer's financial situation and proposed § 1041.6 in assessing consumers' borrowing history before determining whether a consumer has the ability to repay a new covered short-term loan. In particular, proposed § 1041.5(a) includes definitions for various categories of income and expenses that are used in proposed § 1041.5(b), which would establish the methodology that would generally be required for assessing consumers' ability to repay covered short-term loans. The substantive requirements for making the calculations for each category of income and expenses, as well as the overall determination of a consumer's ability to repay, are provided in proposed § 1041.5(b) and (c), and in their respective commentary. These proposed definitions are discussed in detail below.

5(a)(1) Basic Living Expenses

Proposed § 1041.5(a)(1) would define the basic living expenses component of the ability-to-repay determination that would be required in proposed § 1041.5(b). It would define basic living expenses as expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Proposed § 1041.5(b) would require the lender to reasonably determine a dollar amount that is sufficiently large so that the consumer would likely be able to make the loan payments and meet basic living expenses without having to default on major financial obligations or having to rely on new consumer credit during the applicable period.

Accordingly, the proposed definition of basic living expenses is a principle-based definition and does not provide a comprehensive list of the expenses for which a lender must account. Proposed comment 5(a)(1)-1 provides illustrative examples of expenses that would be covered by the definition. It provides that food and utilities are examples of goods and services that are necessary for maintaining health and welfare, and that transportation to and from a place of employment and daycare for dependent children, if applicable, are examples of goods and services that are necessary for maintaining the ability to produce income.

The Bureau recognizes that provision of a principle-based definition leaves some ambiguity about, for example, what types and amounts of goods and services are "necessary" for the stated purposes. Lenders would have flexibility in how they determine dollar amounts that meet the proposed definition, provided that they do not rely on amounts that are so low that they are not reasonable for consumers to pay for the types and level of expenses in the definition.

The Bureau's proposed methodology also would not mandate verification or detailed analysis of every individual consumer expenditure. In contrast to major financial obligations (see below), a consumer's recent expenditures may not necessarily reflect the amounts a consumer needs for basic living expenses during the term of a prospective loan, and the Bureau is concerned that such a requirement could substantially increase costs for lenders and consumers while adding little protection for consumers.

The Bureau solicits comment on its principle-based approach to defining basic living expenses, including whether limitation of the definition to "necessary" expenses is appropriate, and whether an alternative, more prescriptive approach would be preferable. For example, the Bureau solicits comment on whether the definition should include, rather than expenses of the types and in amounts that are "necessary" for the purposes specified in the proposed definition, expenses of the types that are likely to recur through the term of the loan and in amounts below which a consumer cannot realistically reduce them. The Bureau also solicits comment on whether there are standards used in other contexts that could be relied upon by the Bureau. For example, the Bureau is aware that the Internal Revenue Service and bankruptcy courts have their own respective standards for calculating amounts an individual needs for expenses while making payments toward a delinquent tax liability or under a bankruptcy-related repayment plan.

5(a)(2) Major Financial Obligations

Proposed § 1041.5(a)(2) would define the major financial obligations component of the ability-to-repay determination specified in proposed § 1041.5(b). Proposed § 1041.5(b) would generally require a lender to determine that a consumer will have sufficient residual income, which is net income after subtracting amounts already committed for making payments for major financial obligations, to make payments under a prospective covered short term loan and to meet basic living expenses. Payments for major financial obligations would be subject to the consumer statement and verification evidence provisions under proposed § 1041.5(c)(3).

Specifically, proposed § 1041.5(a)(2) would define the term to mean a consumer's housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations. Comment 5(a)(2)-1 would further clarify that housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. It would provide that minimum payments under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered loan payments, and minimum required credit card payments.

Expenses that the Bureau has included in the proposed definition are expenses that are typically recurring, that can be significant in the amount of a consumer's income that they consume, and that a consumer has little or no ability to change, reduce or eliminate in the short run, relative to their levels up until application for a covered short-term loan. The Bureau believes that the extent to which a particular consumer's net income is already committed to making such payments is highly relevant to determining whether that consumer has the ability to make payments under a prospective covered short-term loan. As a result, the Bureau believes that a lender should be required to inquire about such payments, that they should be subject to verification for accuracy and completeness to the extent feasible, and that a lender should not be permitted to rely on consumer income already committed to such payments in determining a consumer's ability to repay. Expenses included in the proposed definition are roughly analogous to those included in total monthly debt obligations for calculating monthly debt-to-income ratio and monthly residual income under the Bureau's ability-to-repay requirements for certain residential mortgage loans. (*See* 12 CFR 1026.43(c)(7)(i)(A).)

The Bureau has adjusted its approach to major financial obligations based on feedback from SERs and other industry stakeholders on the Small Business Review Panel Outline. In the SBREFA process, the Bureau stated that it was considering including within the category of major financial obligations "other legally required payments," such as alimony, and that the Bureau had considered an alternative approach that would have included utility payments and regular medical expenses. However, the Bureau now believes that it would be unduly burdensome to require lenders to make individualized projections of a consumer's utility or medical expenses. With respect to alimony, the Bureau believes that relatively few consumers seeking covered loans have readily verifiable alimony obligations and that, accordingly, inquiring about alimony obligations would impose unnecessary burden. The Bureau also is not including a category of "other legally required payments" because the Bureau believes that category, which was included in the Small Business Review Panel Outline, would leave too much ambiguity about what other payments are covered. For further discussion of burden on small businesses associated with verification requirements, see the section-by-section analysis of proposed § 1041.5(c)(3), below.

The Bureau invites comment on whether the items included in the proposed definition of major financial obligations are appropriate, whether other items should be included and, if so, whether and how the items should be subject to verification. For example, the Bureau invites comment on whether there are other obligations that are typically recurring, significant, and not changeable by the consumer, such as, for example, alimony, daycare commitments, health insurance premiums (other than premiums deducted from a consumer's paycheck, which are already excluded from the proposed definition of net income), or unavoidable medical expenses. The Bureau likewise invites comment on whether there are types of payments to which a consumer may be contractually obligated, such as payments or portions of payments under contracts for telecommunication services, that a consumer is unable to reduce from their amounts as of consummation, such that the payments should be included in the definition of major financial obligations. The Bureau also invites comment on the inclusion in the proposed definition of delinquent amounts due, such as on the practicality of asking consumers about delinquent amounts due on major financial obligations, of comparing stated amounts to any delinquent amounts that may be included in verification evidence (*e.g.,* in a national consumer report), and of accounting for such amounts in projecting a consumer's residual income during the term of the prospective loan. The Bureau also invites comment on whether the Bureau should specify additional rules for addressing major financial obligations that are joint obligations of a consumer applying for a covered short-term loan (and of a consumer who is not applying for the loan), or whether the provision in proposed § 1041.5(c)(1) allowing lenders to consider consumer explanations and other evidence is sufficient.

5(a)(3) National Consumer Report

Proposed § 1041.5(a)(3) would define national consumer report to mean a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681a(d), obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p). Proposed § 1041.5(c)(3)(ii) would require a lender to obtain a national consumer report as verification evidence for a consumer's required payments under debt obligations and required payments under court- or government agency-ordered child support obligations. Reports that meet the proposed definition are often referred to informally as a credit report or credit history from one of the three major credit reporting agencies or bureaus. A national consumer report may be furnished to a lender from a consumer reporting agency that is not a nationwide consumer reporting agency, such as a consumer reporting agency that is a reseller.

5(a)(4) Net Income

Proposed § 1041.5(a)(4) would define the net income component of the ability-to-repay determination calculation specified in proposed § 1041.5(b). Specifically, it would define the term as the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions that the consumer has directed the payer to deduct, but before deductions of any amounts for payments under a prospective covered short term loan or for any major financial obligation. Proposed § 1041.5(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a prospective covered short-term loan and to meet basic living expenses. Proposed § 1041.5(a)(6), discussed below, would define residual income as the sum of net income that the lender projects the consumer will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period. Net income would be subject to the consumer statement and verification evidence provisions under proposed § 1041.5(c)(3).

The proposed definition is similar to what is commonly referred to as "take-home pay" but is phrased broadly to apply to income received from employment, government benefits, or other sources. It would exclude virtually all amounts deducted by the payer of the income, whether deductions are required or voluntary, such as voluntary insurance premiums or union dues. The Bureau believes that the total dollar amount that a consumer actually receives after all such deductions is the amount that is most instructive in determining a consumer's ability to repay. Certain deductions (*e.g.,* taxes) are beyond the consumer's control. Other deductions may not be revocable, at least for a significant period of time, as a result of contractual obligations to which the consumer has entered. Even with respect to purely voluntary deductions, most consumers are unlikely to be able to reduce or eliminate such deductions, between consummation of a loan and the time when payments under the loan would fall due. The Bureau also believes that the net amount a consumer actually receives after all such deductions is likely to be the amount most readily known to consumers applying for a covered short-term loan (rather than, for example, periodic gross income) and is also the amount that is most readily verifiable by lenders through a variety of methods. The proposed definition would clarify, however, that net income is calculated before deductions of any amounts for payments under a prospective covered short-term loan or for any major financial obligation. The Bureau proposes the clarification to prevent double counting any such amounts when making the ability-to-repay determination.

The Bureau invites comment on the proposed definition of net income and whether further guidance would be helpful.

5(a)(5) Payment Under the Covered Short-Term Loan

Proposed § 1041.5(a)(5) would define payment under the covered short-term loan, which is a component of the ability-to-repay determination calculation specified in proposed § 1041.5(b). Proposed § 1041.5(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a covered short-term loan and to meet basic living expenses. Specifically, the definition of payment under the covered short-term loan in proposed § 1041.5(a)(5)(i) and (ii) would include all costs payable by the consumer at a particular time after consummation, regardless of how the costs are described in an agreement or whether they are payable to the lender or a third party. Proposed § 1041.5(a)(5)(iii) provides special rules for projecting payments under the covered short-term loan on lines of credit for purposes of the ability to repay test, since actual payments for lines of credit may vary depending on usage.

Proposed § 1041.5(a)(5)(i) would apply to all covered short-term loans. It would define payment under the covered short-term loan broadly to mean the combined dollar amount payable by the consumer in connection with the covered short-term loan at a particular time following consummation. Under proposed § 1041.5(b), the lender would be required to reasonably determine the payment amount under this proposed definition as of the time of consummation. The proposed definition would further provide that, for short-term loans with multiple payments, in calculating each payment under the covered loan, the lender must assume that the consumer has made preceding required payments and that the consumer has not taken any affirmative act to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered loan. Proposed § 1041.5(a)(5)(ii) would similarly apply to all covered short-term loans and would clarify that payment under the covered loan includes all principal, interest, charges, and fees.

The Bureau believes that a broad definition, such as the one proposed, is necessary to capture the full dollar amount payable by the consumer in connection with the covered short-term loan, including amounts for voluntary insurance or memberships and regardless of whether amounts are due to the lender or another person. It is the total dollar amount due at each particular time that is relevant to determining whether or not a consumer has the ability to repay the loan based on the consumer's projected net income and payments for major financial obligations. The amount of the payment is what is important, not whether the components of the payment include principal, interest, fees, insurance premiums, or other charges. The Bureau recognizes, however, that under the terms of some covered short-term loans, a consumer may have options regarding how much the consumer must pay at any given time and that the consumer may in some cases be able to select a different payment option. The proposed definition would include any amount payable by a consumer in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule, or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered short-term loan. Proposed comment 5(a)(5)(i) and 5(a)(5)(ii)-1 includes three examples applying the proposed definition to scenarios in which the payment under the covered short-term loan includes several components, including voluntary fees owed to a person other than the lender, as well as scenarios in which the consumer has the option of making different payment amounts.

Proposed § 1041.5(a)(5)(iii) would include additional provisions for calculating the projected payment amount under a covered line of credit for purposes of assessing a consumer's ability to repay the loan. As explained in proposed comment 5(a)(5)(iii)-1, such rules are necessary because the amount and timing of the consumer's actual payments on a line of credit after consummation may depend on the consumer's utilization of the credit (*i.e.,* the amount the consumer has drawn down) or on amounts that the consumer has repaid prior to the payments in question. As a result, if the definition of payment under the covered short-term loan did not specify assumptions about consumer utilization and repayment under a line of credit, there would be uncertainty as to the amounts and timing of payments to which the ability-to-repay requirement applies. Proposed § 1041.5(a)(5)(iii) therefore would prescribe assumptions that a lender must make in calculating the payment under the covered short-term loan. It would require the lender to assume that the consumer will utilize the full amount of credit under the covered loan as soon as the credit is available to the consumer and that the consumer will make only minimum required payments under the covered loan. The lender would then apply the ability-to-repay determination to that assumed repayment schedule.

The Bureau believes these assumptions about a consumer's utilization and repayment are important to ensure that the lender makes its ability-to-repay determination based on the most challenging loan payment that a consumer may face under the covered loan. They also reflect what the Bureau believes to be the likely borrowing and repayment behavior of many consumers who obtain covered loans with a line of credit. Such consumers are typically facing an immediate liquidity need and, in light of the relatively high cost of credit, would normally seek a line of credit approximating the amount of the need. Assuming the lender does not provide a line of credit well in excess of the consumer's need, the consumer is then likely to draw down the full amount of the line of credit shortly after consummation. Liquidity-constrained consumers may make only minimum required payments under a line of credit and, if the terms of the covered loan provide for an end date, may then face having to repay the outstanding balance in one payment at a time specified under the terms of the covered short-term loan. It is such a payment that is likely to be the highest payment possible under the terms of the covered short-term loan and therefore the payment for which a consumer is least likely to have the ability to repay.

The Bureau invites comment on the proposed definition of payment under the covered short-term loan. Specifically, the Bureau invites comment on whether the provisions of proposed § 1041.5(a)(5) are sufficiently comprehensive and clear to allow for determination of payment amounts under covered short-term loans, especially for lines of credit.

5(a)(6) Residual Income

Proposed § 1041.5(a)(6) would define the residual income component of the ability-to-repay determination calculation specified in proposed § 1041.5(b). Specifically, it would define the term as the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts must be based on verification evidence, as provided under proposed § 1041.5(c). Proposed § 1041.5(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a covered short-term loan and to meet basic living expenses.

The proposed definition would ensure that a lender's ability-to-repay determination cannot rely on the amount of a consumer's net income that, as of the time a prospective loan would be consummated, is already committed to pay for major financial obligations during the applicable period. For example, a consumer's net income may be greater than the amount of a loan payment, so that the lender successfully obtains the loan payment from a consumer's deposit account once the consumer's income is deposited into the account. But if the consumer is then left with insufficient funds to make payments for major financial obligations, such as a rent payment, then the consumer may be forced to choose between failing to pay rent when due, forgoing basic needs, or reborrowing.

5(b) Reasonable Determination Required

Proposed § 1041.5(b) would prohibit lenders from making covered short-term loans without first making a reasonable determination that the consumer will have the ability to repay the loan according to its terms, unless the loans are made in accordance with proposed § 1041.7. Specifically, proposed § 1041.5(b)(1) would require lenders to make a reasonable determination of ability to repay before making a new covered short-term loan, increasing the credit available under an existing loan, or before advancing additional credit under a covered line of credit if more than 180 days have expired since the last such determination. Proposed § 1041.5(b)(2) specifies minimum elements of a baseline methodology that would be required for determining a consumer's ability to repay, using a residual income analysis and an assessment of the consumer's prior borrowing history. It would require the assessment to be based on projections of the consumer's net income, major financial obligations, and basic living expenses that are made in accordance with proposed § 1041.5(c). It would require that, using such projections, the lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the loan and still meet basic living expenses during the term of the loan. It would further require that a lender must conclude that the consumer, after making the highest payment under the loan (typically, the last payment), will continue to be able to meet major financial obligations as they fall due and meet basic living expenses for a period of 30 additional days. Finally, proposed § 1041.5(b)(2) would require that, in situations in which the consumer's recent borrowing history suggests that she may have difficulty repaying a new loan as specified in proposed § 1041.6, a lender must satisfy the requirements in proposed § 1041.6 before extending credit.

5(b)(1)

Proposed § 1041.5(b)(1) would provide generally that, except as provided in § 1041.7, a lender must not make a covered short-term loan or increase the credit available under a covered short-term loan unless the lender first makes a reasonable determination of ability to repay for the covered short-term loan. The provision would also impose a requirement to determine a consumer's ability to repay before advancing additional funds under a covered short-term loan that is a line of credit if such advance would occur more than 180 days after the date of a previous required determination.

Proposed § 1041.5(b)(1)(i) would provide that a lender is not required to make the determination when it makes a covered short-term loan under the conditions set forth in § 1041.7. The conditions that apply under § 1041.7 provide alternative protections from the harms caused by covered short-term loan payments that exceed a consumer's ability to repay, such that the Bureau is proposing to allow lenders to make such loans in accordance with the regulation without engaging in an ability-to-repay determination under §§ 1041.5 and 1041.6. (See the discussions of § 1041.7, below.)

The Bureau notes that proposed § 1041.5(b)(1) would require the ability-to-repay determination before a lender actually takes one of the triggering actions. The Bureau recognizes that lenders decline covered loan applications for a variety of reasons, including to prevent fraud, avoid possible losses, and to comply with State law or other regulatory requirements. Accordingly, the requirements of § 1041.5(b)(1) would not require a lender to make the ability-to-repay determination for every covered short-term loan application it receives, but rather only before taking one of the enumerated actions with respect to a covered short-term loan. Similarly, nothing in proposed § 1041.5(b)(1) would prohibit a lender from applying screening or underwriting approaches in addition to those required under proposed § 1041.5(b) prior to making a covered short-term loan.

Proposed § 1041.5(b)(1)(ii) would provide that, for a covered short-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a prior required determination, unless the lender first makes a new reasonable determination that the consumer will have the ability to repay the covered short-term loan. Under a line of credit, a consumer typically can obtain advances up to the maximum available credit at the consumer's discretion, often long after the covered loan was consummated. Each time the consumer obtains an advance under a line of credit, the consumer becomes obligated to make a new payment or series of payments based on the terms of the covered loan. But when significant time has elapsed since the date of a lender's prior required determination, the facts on which the lender relied in determining the consumer's ability to repay may have changed significantly. During the Bureau's outreach to industry, the Small Dollar Roundtable urged the Bureau to require a lender to periodically make a new reasonable determination of ability to repay in connection with a covered loan that is a line of credit. The Bureau believes that the proposed requirement to make a new determination of ability to repay for a line of credit 180 days following a prior required determination appropriately balances the burden on lenders and the protective benefit for consumers.

Reasonable Determination

Proposed § 1041.5(b) would require a lender to make a reasonable determination that a consumer will be able to repay a covered short-term loan according to its terms. As discussed above and as reflected in the provisions of proposed § 1041.5(b), a consumer has the ability to repay a covered short-term loan according to its terms only if the consumer is able to make all payments under the covered loan as they fall due while also making payments under the consumer's major financial obligations as they fall due and continuing to meet basic living expenses without, as a result of making payments under the covered loan, having to reborrow.

Proposed comment 5(b)-1 provides an overview of the baseline methodology that would be required as part of a reasonable determination of a consumer's ability to repay in proposed §§ 1041.5(b)(2) and (c) and 1041.6.

Proposed comment 5(b)-2 would identify standards for evaluating whether a lender's ability-to-repay determinations under proposed § 1041.5 are reasonable. It would clarify minimum requirements of a reasonable ability-to-repay determination; identify assumptions that, if relied upon by the lender, render a determination not reasonable; and establish that the overall performance of a lender's covered short-term loans is evidence of whether the lender's determinations for those covered loans are reasonable.

The proposed standards would not impose bright line rules prohibiting covered short-term loans based on fixed mathematical ratios or similar distinctions. Moreover, the Bureau does not anticipate that a lender would need to perform a manual analysis of each prospective loan to determine whether it meets all of the proposed standards. Instead, each lender would be required under proposed § 1041.18 to develop and implement policies and procedures for approving and making covered loans in compliance with the proposed standards and based on the types of covered loans that the lender makes. A lender would then apply its own policies and procedures to its underwriting decisions, which the Bureau anticipates could be largely automated for the majority of consumers and covered loans.

Minimum requirements. Proposed comment 5(b)-2.i would describe some of the specific respects in which a lender's determination must be reasonable. For example, it would note that the determination must include the applicable determinations provided in proposed § 1041.5(b)(2), be based on reasonable projections of a consumer's net income and major financial obligations in accordance with proposed § 1041.5(c), be based on reasonable estimates of a consumer's basic living expenses under proposed § 1041.5(b), and appropriately account for the possibility of volatility in a consumer's income and basic living expenses during the term of the loan under proposed § 1041.5(b)(2)(i). It would also have to be consistent with the lender's written policies and procedures required under proposed § 1041.18(b).

Proposed comment 5(b)-2.i would also provide that to be reasonable, a lender's ability-to-repay determination must be grounded in reasonable inferences and conclusions in light of information the lender is required to obtain or consider. As discussed above, each lender would be required under proposed § 1041.18 to develop policies and procedures for approving and making covered loans in compliance with the proposal. The policies and procedures would specify the conclusions that the lender makes based on information it obtains, and lenders would then be able to largely automate application of those policies and procedures for most consumers. For example, proposed § 1041.5(c) would require a lender to obtain verification evidence for a consumer's net income and payments for major financial obligations, but it would provide for lender discretion in resolving any ambiguities in the verification evidence to project what the consumer's net income and payments for major financial obligations will be following consummation of the covered short-term loan.

Finally, proposed comment 5(b)-2.i would provide that for a lender's ability-to-repay determination to be reasonable, the lender must appropriately account for information known by the lender, whether or not the lender is required to obtain the information under proposed § 1041.5, that indicates that the consumer may not have the ability to repay a covered short-term loan according to its terms. The provision would not require a lender to obtain information other than information specified in proposed § 1041.5. However, a lender might become aware of information that casts doubt on whether a particular consumer would have the ability to repay a particular prospective covered short-term loan. For example, proposed § 1041.5 would not require a lender to inquire about a consumer's individual transportation or medical expenses, and the lender's ability-to-repay method might comply with the proposed requirement to estimate consumers' basic living expenses by factoring into the estimate of basic living expenses a normal allowance for expenses of this type. But if the lender learned that a particular consumer had a transportation or recurring medical expense dramatically in excess of an amount the lender used in estimating basic living expenses for consumers generally, proposed comment 5(b)-2.i would clarify that the lender could not simply ignore that fact. Instead, it would have to consider the transportation or medical expense and then reach a reasonable determination that the expense does not negate the lender's otherwise reasonable ability-to-repay determination.

Similarly, in reviewing borrowing history records a lender might learn that the consumer completed a three-loan sequence of covered short-term loans made either under proposed §§ 1041.5 and 1041.6 or under proposed § 1041.7, waited for 30 days before seeking to reborrow as required by proposed § 1041.6 or proposed § 1041.7 and then sought to borrow on the first permissible day under those sections, and that this has been a recurring pattern for the consumer in the past. While the fact that the consumer on more than one occasion has sought a loan on the first possible day that the consumer is free to do so may be attributable to new needs that arose following the conclusion of each prior sequence, an alternative—and perhaps more likely explanation—is that the consumer's consistent need to borrow as soon as possible is attributable to spillover effects from having repaid the last loan sequence. In these circumstances, a lender's decision that the consumer has the ability to repay a new loan of the same amount and on the same terms as the prior loans might not be reasonable if the lender did not take into account these circumstances.

The Bureau invites comments on the minimum requirements for making a reasonable determination of ability to repay, including whether additional specificity should be provided in the regulation text or in the commentary with respect to circumstances in which a lender is required to take into account information known by the lender.

Determinations that are not reasonable. Proposed comment 5(b)-2.ii would provide an example of an ability-to-repay determination that is not reasonable. The example is a determination that relies on an assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered short-term loan, to make payments under major financial obligations, or to meet basic living expenses. The Bureau believes that a consumer whose net income would be sufficient to make payments under a prospective covered short-term loan, to make payments under major financial obligations, and to meet basic living expenses during the applicable period only if the consumer supplements that net income by borrowing additional consumer credit is a consumer who, by definition, lacks the ability to repay the prospective covered short-term loan. Although the Bureau believes this reasoning is clear, it is proposing the commentary example because some lenders have argued that the mere fact that a lender successfully secures repayment of the full amount due from a consumer's deposit account shows that the consumer had the ability to repay the loan, even if the consumer then immediately has to reborrow to meet the consumer's other obligations and expenses. Inclusion of the example in commentary would confirm that an ability-to-repay determination is not reasonable if it relies on an implicit assumption that a consumer will have the ability to repay a covered short-term loan for the reason that the consumer will obtain further consumer credit to make payments under major financial obligations or to meet basic living expenses.

The Bureau invites comment on whether it would be useful to articulate additional specific examples of ability-to-repay determinations that are not reasonable, and if so which specific examples should be listed. In this regard, the Bureau has considered whether there are any circumstances under which basing an ability-to-repay determination for a covered short-term loan on assumed future borrowing or assumed future accumulation of savings would be reasonable, particularly in light of the nature of consumer circumstances when they take out such loans. The Bureau seeks comment on this question.

Performance of a lender's short-term covered loans as evidence. In determining whether a lender has complied with the requirements of proposed § 1041.5, there is a threshold question of whether the lender has carried out the required procedural steps, for example by obtaining consumer statements and verification evidence, projecting net income and payments under major financial obligations, and making determinations about the sufficiency of a consumer's residual income. In some cases, a lender might have carried out these steps but still have violated § 1041.5 by making determinations that are facially unreasonable, such as if a lender's determinations assume that a consumer needs amounts to meet basic living expenses that are clearly insufficient for that purpose.

In other cases the reasonableness or unreasonableness of a lender's determinations might be less clear. Accordingly, proposed comment 5(b)-2.iii would provide that evidence of whether a lender's determinations of ability to repay are reasonable may include the extent to which the lender's determinations subject to proposed § 1041.5 result in rates of delinquency, default, and reborrowing for covered short-term loans that are low, equal to, or high, including in comparison to the rates of other lenders making similar covered loans to similarly situated consumers.

As discussed above, the Bureau recognizes that the affordability of loan payments is not the only factor that affects whether a consumer repays a covered loan according to its terms without reborrowing. A particular consumer may obtain a covered loan with payments that are within the consumer's ability to repay at the time of consummation, but factors such as the consumer's continual opportunity to work, willingness to repay, and financial management may affect the performance of that consumer's loan. Similarly, a particular consumer may obtain a covered loan with payments that exceed the consumer's ability to repay at the time of consummation, but factors such as a lender's use of a leveraged payment mechanism, taking of vehicle security, and collection tactics, as well as the consumer's ability to access informal credit from friends or relatives, might result in repayment of the loan without indicia of harm that are visible through observations of loan performance and reborrowing. However, if a lender's determinations subject to proposed § 1041.5 regularly result in rates of delinquency, default, or reborrowing that are significantly higher than those of other lenders making similar short-term covered loans to similarly situated consumers, that fact is evidence that the lender may be systematically underestimating amounts that consumers generally need for basic living expenses, or is in some other way overestimating consumers' ability to repay.

Proposed comment 5(b)-2.iii would not mean that a lender's compliance with the requirements of proposed § 1041.5 for a particular loan could be determined based on the performance of that loan. Nor would proposed comment 5(b)-2.iii mean that comparison of the performance of a lender's covered short-term loans with the performance of covered short-term loans of other lenders could be the sole basis for determining whether that lender's determinations of ability to repay comply or do not comply with the requirements of proposed § 1041.5. For example, one lender may have default rates that are much lower than the default rates of other lenders because it uses aggressive collection tactics, not because its determinations of ability to repay are reasonable. Similarly, the fact that one lender's default rates are similar to the default rates of other lenders does not necessarily indicate that the lenders' determinations of ability to repay are reasonable; the similar rates could also result from the fact that the lenders' respective determinations of ability to repay are similarly unreasonable. The Bureau believes, however, that such comparisons will provide important evidence that, considered along with other evidence, would facilitate evaluation of whether a lender's ability-to-repay determinations are reasonable.

For example, a lender may use estimates for a consumer's basic living expenses that initially appear unrealistically low, but if the lender's determinations otherwise comply with the requirements of proposed § 1041.5 and otherwise result in covered short-term loan performance that is materially better than that of peer lenders, the covered short-term loan performance may help show that the lender's determinations are reasonable. Similarly, an online lender might experience default rates significantly in excess of those of peer lenders, but other evidence may show that the lender followed policies and procedures similar to those used by other lenders and that the high default rate resulted from a high number of fraudulent applications. On the other hand, if consumers experience systematically worse rates of delinquency, default, and reborrowing on covered short-term loans made by lender A, compared to the rates of other lenders making similar loans, that fact may be important evidence of whether that lender's estimates of basic living expenses are, in fact, unrealistically low and therefore whether the lender's ability-to-repay determinations are reasonable.

The Bureau invites comment on whether and, if so, how the performance of a lender's portfolio of covered short-term loans should be factored in to an assessment of whether the lender has complied with its obligations under the rule, including whether the Bureau should specify thresholds which presumptively or conclusively establish compliance or non-compliance and, if so, how such thresholds should be determined.

Payments Under the Covered Short-Term Loan

Proposed comment 5(b)-3 notes that a lender is responsible for calculating the timing and amount of all payments under the covered short-term loan. The timing and amount of all loan payments under the covered short-term loan are an essential component of the required reasonable determination of a consumer's ability to repay under proposed § 1041.5(b)(2)(i), (ii), and (iii). Calculation of the timing and amount of all payments under a covered loan is also necessary to determine which component determinations under proposed § 1041.5(b)(2)(i), (ii), and (iii) apply to a particular prospective covered loan. Proposed comment 5(b)-3 cross references the definition of payment under a covered short-term loan in proposed § 1041.5(a)(5), which includes requirements and assumptions that apply to a lender's calculation of the amount and timing of all payments under a covered short-term loan.

Basic Living Expenses

A lender's ability-to-repay determination under proposed § 1041.5(b) would be required to account for a consumer's need to meet basic living expenses during the applicable period while also making payments for major financial obligations and payments under a covered short-term loan. As discussed above, proposed § 1041.5(a)(1) would define basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. If a lender's ability-to-repay determination did not account for a consumer's need to meet basic living expenses, and instead merely determined that a consumer's net income is sufficient to make payments for major financial obligations and for the covered short-term loan, the determination would greatly overestimate a consumer's ability to repay a covered short-term loan and would be unreasonable. Doing so would be the equivalent of determining, under the Bureau's ability-to-repay rule for residential mortgage loans, that a consumer has the ability to repay a mortgage from income even if that mortgage would result in a debt-to-income ratio of 100 percent. The Bureau believes there would be nearly universal consensus that such a determination would be unreasonable.

However, the Bureau recognizes that in contrast with payments under most major financial obligations, which the Bureau believes a lender can usually ascertain and verify for each consumer without unreasonable burden, it would be extremely challenging to determine a complete and accurate itemization of each consumer's basic living expenses. Moreover, a consumer may have somewhat greater ability to reduce in the short-run some expenditures that do not meet the Bureau's proposed definition of major financial obligations. For example, a consumer may be able for a period of time to reduce commuting expenses by ride sharing.

Accordingly, the Bureau is not proposing to prescribe a particular method that a lender would be required to use for estimating an amount of funds that a consumer requires to meet basic living expenses for an applicable period. Instead, proposed comment 5(b)-4 would provide the principle that whether a lender's method complies with the proposed § 1041.5 requirement for a lender to make a reasonable ability-to-repay determination depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

Proposed comment 5(b)-4 would provide a non-exhaustive list of methods that may be reasonable ways to estimate basic living expenses. The first method is to set minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer's income, location, and household size. This example is based on a method that several lenders have told the Bureau they currently use in determining whether a consumer will have the ability to repay a loan and is consistent with the recommendations of the Small Dollar Roundtable. The Bureau notes that the Bureau of Labor Statistics conducts a periodic survey of consumer expenditures which may be useful for this purpose. The Bureau invites comment on whether the example should identify consideration of a consumer's income, location, and household size as an important aspect of the method.

The second method is to obtain additional reliable information about a consumer's expenses other than the information required to be obtained under proposed § 1041.5(c), to develop a reasonably accurate estimate of a consumer's basic living expenses. The example would not mean that a lender is required to obtain this information but would clarify that doing so may be one effective method of estimating a consumer's basic living expenses. The method described in the second example may be more convenient for smaller lenders or lenders with no experience working with statistically valid surveys of consumer expenses, as described in the first example.

The third example is any method that reliably predicts basic living expenses. The Bureau is proposing to include this broadly phrased example to clarify that lenders may use innovative and data-driven methods that reliably estimate consumers' basic living expenses, even if the methods are not as intuitive as the methods in the first two examples. The Bureau would expect to evaluate the reliability of such methods by taking into account the performance of the lender's covered short-term loans in absolute terms and relative to other lenders, as discussed in proposed comment 5(b)-3.iii.

Proposed comment 5(b)-4 would provide a non-exhaustive list of unreasonable methods of determining basic living expenses. The first example is a method that assumes that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer's net income that is not required for payments for major financial obligations is available for loan payments. The second example is a method of setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered short-term loans, have yielded high rates of default and reborrowing, in absolute terms or relative to rates of default and reborrowing of other lenders making covered short-term loans to similarly situated consumers.

The Bureau solicits comment on all aspects of the proposed requirements for estimating basic living expenses, including the methods identified as reasonable or unreasonable, whether additional methods should be specified, or whether the Bureau should provide either a more prescriptive method for estimating basic living expenses or a safe harbor methodology (and, if so, what that methodology should be). The Bureau also solicits comment on whether lenders should be required to ask consumers to identify, on a written questionnaire that lists common types of basic living expenses, how much they typically spend on each type of expense. The Bureau further solicits comment on whether and how lenders should be required to verify the completeness and correctness of the amounts the consumer lists and how a lender should be required to determine how much of the identified or verified expenditures is necessary or, under the alternative approach to defining basic living expenses discussed above, is recurring and not realistically reducible during the term of the prospective loan.

5(b)(2)

Proposed § 1041.5(b)(2) would set forth the Bureau's specific proposed methodology for making a reasonable determination of a consumer's ability to pay a covered short-term loan. Specifically, it would provide that a lender's determination of a consumer's ability to repay is reasonable only if, based on projections in accordance with proposed § 1041.5(c), the lender reasonably makes the applicable determinations provided in proposed §§ 1041.5(b)(2)(i), (ii), and (iii). Proposed § 1041.5(b)(2)(i) would require an assessment of the sufficiency of the consumer's residual income during the term of the loan, and proposed § 1041.5(b)(2)(ii) would require assessment of an additional period in light of the special harms associated with loans with short-term structures. Proposed § 1041.5(b)(2)(iii) would require compliance with additional requirements in proposed § 1041.6 in situations in which the consumer's borrowing history suggests that he or she may have difficulty repaying additional credit.

5(b)(2)(i)

Proposed § 1041.5(b)(2)(i) would provide that for any covered short-term loan subject to the ability-to-repay requirement of proposed § 1041.5, a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the term of covered short-term loan. As defined in proposed § 1041.5(a)(6), residual income is the amount of a consumer's net income during a period that is not already committed to payments under major financial obligations during the period. If the payments for a covered short-term loan would consume so much of a consumer's residual income that the consumer would be unable to meet basic living expenses, then the consumer would likely suffer injury from default or reborrowing, or suffer collateral harms from unaffordable payments.

In proposing § 1041.5(b)(2)(i) the Bureau recognizes that, even when lenders determine at the time of consummation that consumers will have the ability to repay a covered short-term loan, some consumers may still face difficulty making payments under covered short-term loans because of changes that occur after consummation. For example, some consumers would experience unforeseen decreases in income or increases in expenses that would leave them unable to repay their loans. Thus, the fact that a consumer ended up in default is not, in and of itself, evidence that the lender failed to make a reasonable assessment of the consumer's ability to repay ex ante. Rather, proposed § 1041.5(b)(2)(i) looks to the facts as reasonably knowable prior to consummation and would mean that a lender is prohibited from making a covered short-term loan subject to proposed § 1041.5 if there is not a reasonable basis at consummation for concluding that the consumer will be able to make payments under the covered loan while also meeting the consumer's major financial obligations and meeting basic living expenses.

While some consumers may have so little (or no) residual income as to be unable to afford any loan, for other consumers the ability to repay will depend on the amount and timing of the required repayments. Thus, even if a lender concludes that there is not a reasonable basis for believing that a consumer can pay a particular prospective loan, proposed § 1041.5(b)(2)(i) would not prevent a lender from making a different covered loan with more affordable payments to such a consumer, provided that the more affordable payments would not consume so much of a consumer's residual income that the consumer would be unable to meet basic living expenses and provided further that the alternative loan is consistent with applicable State law.

Applicable Period for Residual Income

As discussed above, under proposed § 1041.5(b)(2)(i) a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the term of the covered short-term loan. To provide greater certainty, facilitate compliance, and reduce burden, the Bureau is proposing a comment to explain how lenders could comply with proposed § 1041.5(b)(2)(i).

Proposed comment 5(b)(2)(i)-1 would provide that a lender complies with the requirement in § 1041.5(b)(2)(i) if it reasonably determines that the consumer's projected residual income during the shorter of the term of the loan or the period ending 45 days after consummation of the loan will be greater than the sum of all payments under the covered short-term loan plus an amount the lender reasonably estimates will be needed for basic living expenses during the term of the covered short-term loan. The method of compliance would allow the lender to make one determination based on the sum of all payments that would be due during the term of the covered short-term loan, rather than having to make a separate determination for each respective payment and payment period in isolation, in cases where the short-term loan provide for multiple payments. However, the lender would have to make the determination for the actual term of the loan, accounting for residual income (*i.e.,* net income minus payments for major financial obligations) that would actually accrue during the shorter of the term of the loan or the period ending 45 days after consummation of the loan.

The Bureau believes that for a covered loan with short duration, a lender should make the determination based on net income the consumer will actually receive during the term of the loan and payments for major financial obligations that will actually be payable during the term of the covered short-term loan, rather than, for example, based on a monthly period that may or may not coincide with the loan term.

When a covered loan period is under 45 days, determining whether the consumer's residual income will be sufficient to make all payments and meet basic living expenses depends a great deal on, for example, how many paychecks the consumer will actually receive during the term of the loan and whether the consumer will also have to make no rent payment, one rent payment, or two rent payments during the term of the loan.

The Bureau is proposing to clarify that the determination must be based on residual income "during the shorter of the term of the loan or the period ending 45 days after consummation of the loan" because the definition of a covered short-term loan includes a loan under which the consumer is required to repay "substantially" the entire amount of the loan within 45 days of consummation. The clarification would ensure that, if an unsubstantial amount were due after 45 days following consummation, the lender could not rely on residual income projected to accrue after the forty-fifth day to determine that the consumer would have sufficient residual income as required under proposed § 1041.5(b)(2)(i). Proposed comment 5(b)(2)(i)-1.i includes an example applying the method of compliance to a covered short-term loan payable in one payment 16 days after the lender makes the covered short-term loan.

The Bureau invites comment on its proposed applicable time period for assessing residual income.

Sufficiency of Residual Income

As discussed above, under proposed § 1041.5(b)(2)(i) a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the shorter of the term of the loan or the period ending 45 days after consummation of the loan. Proposed comment 5(b)(2)(i)-2 would clarify what constitutes "sufficient" residual income for a covered short-term loan. For a covered short-term loans, comment 5(b)(2)(i)-2.i would provide that residual income is sufficient so long as it is greater than the sum of payments that would be due under the covered loan plus an amount the lender reasonably estimates will be needed for basic living expenses.

5(b)(2)(ii)

Proposed § 1041.5(b)(2)(ii) would provide that for a covered short-term loan subject to the ability-to-repay requirement of proposed § 1041.5, a lender must reasonably conclude that the consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the covered short-term loan, and to meet basic living expenses for 30 days after having made the highest payment under the covered short-term loan on its due date. Proposed comment 5(b)(2)(ii)-1 notes that a lender must include in its determination under proposed § 1041.5(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with proposed § 1041.5(c). Proposed comment 5(b)(2)(ii)-1 also includes an example of a covered short-term loan for which a lender could not make a reasonable determination that the consumer will have the ability to repay under proposed § 1041.5(b)(2)(ii).

The Bureau proposes to include the requirement in § 1041.5(b)(2)(ii) for covered short-term loans because the Bureau's research has found that these loan structures are particularly likely to result in reborrowing shortly after the consumer repays an earlier loan. As discussed above in Market Concerns—Short-Term Loans, when a covered loan's terms provide for it to be substantially repaid within 45 days following consummation the fact that the consumer must repay so much within such a short period of time makes it especially likely that the consumer will be left with insufficient funds to make subsequent payments under major financial obligations and to meet basic living expenses. The consumer may then end up falling behind on payments under major financial obligations, being unable to meet basic living expenses, or borrowing additional consumer credit. Such consumers may be particularly likely to borrow new consumer credit in the form of a new covered loan.

This shortfall in a consumer's funds is most likely to occur following the highest payment under the covered short-term loan (which is typically but not necessarily the final payment) and before the consumer's subsequent receipt of significant income. However, depending on regularity of a consumer's income payments and payment amounts, the point within a consumer's monthly expense cycle when the problematic covered short-term loan payment falls due, and the distribution of a consumer's expenses through the month, the resulting shortfall may not manifest until a consumer has attempted to meet all expenses in the consumer's monthly expense cycle, or even longer. Indeed, many payday loan borrowers who repay a first loan and do not reborrow during the ensuing pay cycle (*i.e.,* within 14 days) nonetheless do find it necessary to reborrow before the end of the expense cycle (*i.e.,* within 30 days).

In the Small Business Review Panel Outline, the Bureau described a proposal to require lenders to determine that a consumer will have the ability to repay a covered short-term loan without needing to reborrow for 60 days, consistent with the proposal in the same document to treat a loan taken within 60 days of having a prior covered short-term loan outstanding as part of the same sequence. Several consumer advocates have argued that consumers may be able to juggle expenses and financial obligations for a time, so that an unaffordable loan may not result in reborrowing until after a 30-day period. For the reasons discussed further below in the section-by-section analyses of § 1041.6, the Bureau is now proposing a 30-day period for both purposes.

The Bureau believes that the incidence of reborrowing caused by such loan structures would be somewhat ameliorated simply by determining that a consumer will have residual income during the term of the loan that exceeds the sum of covered loan payments plus an amount necessary to meet basic living expenses during that period. But if the loan payments consume all of a consumer's residual income during the period beyond the amount needed to meet basic living expenses during the period, then the consumer will be left with insufficient funds to make payments under major financial obligations and meet basic living expenses after the end of that period, unless the consumer receives sufficient net income shortly after the end of that period and before the next set of expenses fall due. Often, though, the opposite is true: A lender schedules the due dates of loan payments under covered short-term loans so that the loan payment due date coincides with dates of the consumer's receipts of income. This practice maximizes the probability that the lender will timely receive the payment under the covered short-term loan, but it also means the term of the loan (as well as the relevant period for the lender's determination that the consumer's residual income will be sufficient under proposed § 1041.5(b)(2)(i)) ends on the date of the consumer's receipt of income, with the result that the time between the end of the loan term and the consumer's subsequent receipt of income is maximized.

Thus, even if a lender made a reasonable determination under proposed § 1041.5(b)(2)(i) that the consumer would have sufficient residual income during the loan term to make loan payments under the covered short-term loan and meet basic living expenses during the period, there would remain a significant risk that, as a result of an unaffordable highest payment (which may be the only payment, or the last of equal payments), the consumer would be forced to reborrow or suffer collateral harms from unaffordable payments. The example included in proposed comment 5(b)(2)(ii)-1 illustrates just such a result.

The Bureau invites comment on the necessity of the requirement in proposed § 1041.5(b)(2)(ii) to prevent consumer harms and on any alternatives that would adequately prevent consumer harm while reducing burden for lenders. The Bureau also invites comment on whether the 30-day period in proposed § 1041.5(b)(2)(ii) is the appropriate period of time to use or whether a shorter or longer period of time, such as the 60-day period described in the Small Business Review Panel Outline, would be appropriate. The Bureau also invites comment on whether the time period chosen should run from the date of the final payment, rather than the highest payment, in cases where the highest payment is other than the final payment.

5(b)(2)(iii)

Proposed § 1041.5(b)(2)(iii) would provide that for a covered short-term loan for which a presumption of unaffordability applies under proposed § 1041.6, the lender determine that the requirements of proposed § 1041.6 are satisfied. As discussed below, proposed § 1041.6 would apply certain presumptions, requirements, and prohibitions when the consumer's borrowing history indicates that he or she may have particular difficulty in repaying a new covered loan with certain payment amounts or structures.

5(c) Projecting Consumer Net Income and Payments for Major Financial Obligations

Proposed § 1041.5(c) provides requirements that would apply to a lender's projections of net income and major financial obligations, which in turn serve as the basis for the lender's reasonable determination of ability to repay. Specifically, it would establish requirements for obtaining information directly from a consumer as well as specified types of verification evidence. It would also provide requirements for reconciling ambiguities and inconsistencies in the information and verification evidence.

5(c)(1) General

As discussed above, proposed § 1041.5(b)(2) would provide that a lender's determination of a consumer's ability to repay is reasonable only if the lender determines that the consumer will have sufficient residual income during the term of the loan and for a period thereafter to repay the loan and still meet basic living expenses. Proposed § 1041.5(b)(2) thus carries with it the requirement for a lender to make projections with respect to the consumer's net income and major financial obligations—the components of residual income—during the relevant period of time. And, proposed § 1041.5(b)(2) further provides that to be reasonable such projections must be made in accordance with proposed § 1041.5(c).

Proposed § 1041.5(c)(1) would provide that for a lender's projection of the amount and timing of net income or payments for major financial obligations to be reasonable, the lender must obtain both a written statement from the consumer as provided for in proposed § 1041.5(c)(3)(i), and verification evidence as provided for in proposed § 1041.5(c)(3)(ii), each of which are discussed below. Proposed § 1041.5(c)(1) further provides that for a lender's projection of the amount and timing of net income or payments for major financial obligations to be reasonable it may be based on a consumer's statement of the amount and timing only to the extent the stated amounts and timing are consistent with the verification evidence.

The Bureau believes verification of consumers' net income and payments for major financial obligations is an important component of the reasonable ability-to-repay determination. Consumers seeking a loan may be in financial distress and inclined to overestimate net income or to underestimate payments under major financial obligations to improve their chances of being approved. Lenders have an incentive to encourage such misestimates to the extent that as a result consumers find it necessary to reborrow. This result is especially likely if a consumer perceives that, for any given loan amount, lenders offer only one-size-fits-all loan repayment structure and will not offer an alternative loan with payments that are within the consumer's ability to repay. An ability-to-repay determination that is based on unrealistic factual assumptions will yield unrealistic and unreliable results, leading to the consumer harms that the Bureau's proposal is intended to prevent.

Accordingly, proposed § 1041.5(c)(1) would permit a lender to base its projection of the amount and timing of a consumer's net income or payments under major financial obligations on a consumer's written statement of amounts and timing under proposed § 1041.5(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence of the type specified in proposed § 1041.5(c)(3)(ii). Proposed § 1041.5(c)(1) would further provide that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. The Bureau believes the proposed approach would appropriately ensure that the projections of a consumer's net income and payments for major financial obligations will generally be supported by objective, third-party documentation or other records.

However, the proposed approach also recognizes that reasonably available verification evidence may sometimes contain ambiguous, out-of-date, or missing information. For example, the net income of consumers who seek covered loans may vary over time, such as for a consumer who is paid an hourly wage and whose work hours vary from week to week. In fact, a consumer is more likely to experience financial distress, which may be a consumer's reason for seeking a covered loan, immediately following a temporary decrease in net income from their more typical levels. Accordingly, the proposed approach would not require a lender to base its projections exclusively on the consumer's most recent net income receipt shown in the verification evidence. Instead, it allows the lender reasonable flexibility in the inferences the lender draws about, for example, a consumer's net income during the term of the covered loan, based on the consumer's net income payments shown in the verification evidence, including net income for periods earlier than the most recent net income receipt. At the same time, the proposed approach would not allow a lender to mechanically assume that a consumer's immediate past income as shown in the verification evidence will continue into the future if, for example, the lender has reason to believe that the consumer has been laid off or is no longer employed.

In this regard, the proposed approach recognizes that a consumer's own statements, explanations, and other evidence are important components of a reliable projection of future net income and payments for major financial obligations. Proposed comment 5(c)(1)-1 includes several examples applying the proposed provisions to various scenarios, illustrating reliance on consumer statements to the extent they are consistent with verification evidence and how a lender may reasonably consider consumer explanations to resolve ambiguities in the verification evidence. It includes examples of when a major financial obligation in a consumer report is greater than the amount stated by the consumer and of when a major financial obligation stated by the consumer does not appear in the consumer report at all.

The Bureau anticipates that lenders would develop policies and procedures, in accordance with proposed § 1041.18, for how they project consumer net income and payments for major financial obligations in compliance with proposed § 1041.5(c)(1) and that a lender's policies and procedures would reflect its business model and practices, including the particular methods it uses to obtain consumer statements and verification evidence. The Bureau believes that many lenders and vendors would develop methods of automating projections, so that for a typical consumer, relatively little labor would be required.

The Bureau invites comments on the proposed approach to verification and to making projections based upon verified evidence, including whether the Bureau should permit projections that vary from the most recent verification evidence and, if so, whether the Bureau should be more prescriptive with respect to the permissible range of such variances.

5(c)(2) Changes Not Supported by Verification Evidence

Proposed § 1041.5(c)(2) would provide an exception to the requirement in proposed § 1041.5(c)(1) that projections must be consistent with the verification evidence that a lender would be required to obtain under proposed 1041.5(c)(3)(ii). As discussed below, the required verification evidence will normally consist of third-party documentation or other reliable records of recent transactions or of payment amounts. Proposed § 1041.5(c)(2) would permit a lender to project a net income amount that is higher than an amount that would otherwise be supported under proposed § 1041.5(c)(1), or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under proposed § 1041.5(c)(1), only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer's major financial obligation of the amount and timing of the new or changed net income or payment.

The exception would accommodate situations in which a consumer's net income or payment for a major financial obligation will differ from the amount supportable by the verification evidence. For example, a consumer who has been unemployed for an extended period of time but who just accepted a new job may not be able to provide the type of verification evidence of net income generally required under proposed § 1041.5(c)(3)(ii)(A). Proposed § 1041.5(c)(2) would permit a lender to project a net income amount based on, for example, an offer letter from the new employer stating the consumer's wage, work hours per week, and frequency of pay. The lender would be required to retain the statement in accordance with proposed § 1041.18.

The Bureau invites comments as to whether lenders should be permitted to rely on such evidence in projecting residual income.

5(c)(3) Evidence of Net Income and Payments for Major Financial Obligations

5(c)(3)(i) Consumer Statements

Proposed § 1041.5(c)(3)(i) would require a lender to obtain a consumer's written statement of the amount and timing of the consumer's net income, as well as of the amount and timing of payments required for categories of the consumer's major financial obligations (*e.g.*, credit card payments, automobile loan payments, housing expense payments, child support payments, etc.). The lender would then use the statements as an input in projecting the consumer's net income and payments for major financial obligations during the term of the loan. The lender would also be required to retain the statements in accordance with proposed § 1041.18. As discussed above, the Bureau believes it is important to require lenders to obtain this information directly from consumers in addition to obtaining reasonably available verification evidence under proposed § 1041.5(c)(3)(ii) because the latter sources of information may sometimes contain ambiguous, out-of-date, or missing information. Accordingly, the Bureau believes that projections based on both sources of information will be more reliable than either one standing alone.

Proposed comment 5(c)(3)(i)-1 clarifies that a consumer's written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. It further clarifies that a lender complies with a requirement to obtain the consumer's statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under proposed § 1041.5(b)(2). Proposed comment 5(c)(3)(i)-1 includes the example that a lender's receipt of a consumer's statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer's rent payments are due. Proposed § 1041.5(c)(3)(i) would not specify any particular form or even particular questions or particular words that a lender must use to obtain the required consumer statements.

The Bureau invites comments on whether to require a lender to obtain a written statement from the consumer with respect to the consumer's income and major financial obligations, including whether the Bureau should establish any procedural requirements with respect to securing such a statement and the weight that should be given to such a statement. The Bureau also invites comments on whether a written memorialization by the lender of a consumer's oral statement should not be considered sufficient.

5(c)(3)(ii) Verification Evidence

Proposed § 1041.5(c)(3)(ii) would require a lender to obtain verification evidence for the amounts and timing of the consumer's net income and payments for major financial obligations for a period of time prior to consummation. It would specify the type of verification evidence required for net income and each component of major financial obligations. The proposed requirements are intended to provide reasonable assurance that the lender's projections of a consumer's net income and payments for major financial obligations are based on accurate and objective information, while also allowing lenders to adopt innovative, automated, and less burdensome methods of compliance.

5(c)(3)(ii)(A)

Proposed § 1041.5(c)(3)(ii)(A) would specify that for a consumer's net income, the applicable verification evidence would be a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender's projection under proposed § 1041.5(c)(1). It would not specify a minimum look-back period or number of net income payments for which the lender must obtain verification evidence. The Bureau does not believe it is necessary or appropriate to require verification evidence covering a lookback period of a prescribed length. Rather, sufficiency of the history for which a lender obtains verification evidence may depend upon the source or type of income, the length of the prospective covered longer-term loan, and the consistency of the income shown in the verification evidence the lender initially obtains, if applicable. Lenders would be required to develop and maintain policies and procedures for establishing the sufficient history of net income payments in verification evidence, in accordance with proposed § 1041.18.

Proposed comment 5(c)(3)(ii)(A)-1 would clarify that a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. It would further clarify that a reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), or money services business check-cashing transactions showing the amount and date of a consumer's receipt of income.

The Bureau believes that the proposed requirement would be sufficiently flexible to provide lenders with multiple options for obtaining verification evidence for a consumer's net income. For example, a paper paystub would generally satisfy the requirement, as would a photograph of the paystub uploaded from a mobile phone to an online lender. In addition, the requirement would also be satisfied by use of a commercial service that collects payroll data from employers and provides it to creditors for purposes of verifying a consumer's employment and income. Proposed comment 5(c)(3)(ii)(A)-1 would also allow verification evidence in the form of electronic or paper bank account statements or records showing deposits into the account, as well as electronic or paper records of deposits onto a prepaid card or of check-cashing transactions. Data derived from such sources, such as from account data aggregator services that obtain and categorize consumer deposit account and other account transaction data, would also generally satisfy the requirement. During outreach, service providers informed the Bureau that they currently provide such services to lenders.

Several SERs expressed concern during the SBREFA process that the Bureau's approach to income verification described in the Small Business Review Panel Outline was too burdensome and inflexible. Several other lender representatives expressed similar concerns during the Bureau's outreach to industry. Many perceived that the Bureau would require outmoded or burdensome methods of obtaining verification evidence, such as always requiring a consumer to submit a paper paystub or transmit it by facsimile (fax) to a lender. Others expressed concern about the Bureau requiring income verification at all, stating that many consumers are paid in cash and therefore have no employer-generated records of income.

The Bureau's proposed approach is intended to respond to many of these concerns by providing for a wide range of methods for obtaining verification evidence for a consumer's net income, including electronic methods that can be securely automated through third-party vendors with a consumer's consent. In developing this proposal, Bureau staff met with more than 30 lenders, nearly all of which stated they already use some method—though not necessarily the precise methods the Bureau is proposing—to verify consumers' income as a condition of making a covered loan. The Bureau's proposed approach thus would accommodate most of the methods they described and that the Bureau is aware of from other research and outreach. It is also intended to provide some accommodation for making covered loans to many consumers who are paid in cash. For example, under the Bureau's proposed approach, a lender may be able to obtain verification evidence of net income for a consumer who is paid in cash by using deposit account records (or data derived from deposit account transactions), if the consumer deposits income payments into a deposit account. Lenders often require consumers to have deposit accounts as a condition of obtaining a covered loan, so the Bureau believes that lenders would be able to obtain verification evidence for many consumers who are paid in cash in this manner.

The Bureau recognizes that there are some consumers who receive a portion of their income in cash and also do not deposit their cash income into a deposit account or prepaid card account. For such consumers, a lender may not be able to obtain verification evidence for that portion of a consumer's net income, and therefore generally could not base its projections and ability-to-repay determinations on that portion of such consumers' income. The Bureau, however, does not believe it is appropriate to make an ability-to-repay determination for a covered loan based on income that cannot be reasonably substantiated through any verification evidence. When there is no verification evidence for a consumer's net income, the Bureau believes the risk is too great that projections of net income would be overstated and that payments under a covered short-term loan consequently would exceed the consumer's ability to repay, resulting in the harms targeted by this proposal.

For similar reasons, the Bureau is not proposing to permit the use of predictive models designed to estimate a consumer's income or to validate the reasonableness of a consumer's statement of her income. Given the risks associated with unaffordable short-term loans, the Bureau believes that such models—which the Bureau believes typically are used to estimate annual income—lack the precision required to reasonably project an individual consumer's net income for a short period of time.

The Bureau notes that it has received recommendations from the Small Dollar Roundtable, comprised of a number of lenders making loans the Bureau proposes to cover in this rulemaking and a number of consumer advocates, recommending that the Bureau require income verification.

The Bureau invites comment on the types of verification evidence permitted by the proposed rule and what, if any, other types of verification evidence should be permitted, especially types of verification evidence that would be at least as objective and reliable as the types provided for in proposed § 1041.5(c)(3)(ii)(A) and comment 5(c)(3)(ii)(A)-1. For example, the Bureau is aware of service providers who are seeking to develop methods to verify a consumer's stated income based upon extrinsic data about the consumer or the area in which the consumer lives. The Bureau invites comment on the reliability of such methods, their ability to provide information that is sufficiently current and granular to address a consumer's stated income for a particular and short period of time, and, if they are able to do so, whether income amounts determined under such methods should be a permissible as a form of verification evidence. The Bureau also invites comments on whether the requirements for verification evidence should be relaxed for a consumer whose principal income is documented but who reports some amount of supplemental cash income and, if so, what approach would be appropriate to guard against the risk of consumers' overstating their income and obtaining an unaffordable loan.

5(c)(3)(ii)(B)

Proposed § 1041.5(c)(3)(ii)(B) would specify that for a consumer's required payments under debt obligations, the applicable verification evidence would be a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available. The Bureau believes that most typical consumer debt obligations other than covered loans would appear in a national consumer report. Many covered loans are not included in reports generated by the national consumer reporting agencies, so the lender would also be required to obtain, as verification evidence, a consumer report from a currently registered information system. As discussed above, proposed § 1041.5(c)(1) would permit a lender to base its projections on consumer statements of amounts and timing of payments for major financial obligations (including debt obligations) only to the extent the statements are consistent with the verification evidence. Proposed comment 5(c)(1)-1 includes examples applying that proposed requirement in scenarios when a major financial obligation shown in the verification evidence is greater than the amount stated by the consumer and of when a major financial obligation stated by the consumer does not appear in the verification evidence at all.

Proposed comment 5(c)(3)(ii)(B)-1 would clarify that the amount and timing of a payment required under a debt obligation are the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule. The Bureau anticipates that in some cases, the national consumer report the lender obtains will not include a particular debt obligation stated by the consumer, or that the national consumer report may include, for example, the payment amount under the debt obligation but not the timing of the payment. Similar anomalies could occur with covered loans and a consumer report obtained from a registered information system. To the extent the national consumer report and consumer report from a registered information system omit information for a payment under a debt obligation stated by the consumer, the lender would simply base its projections on the amount and timing stated by the consumer.

The Bureau notes that proposed § 1041.5(c)(3)(ii)(B) does not require a lender to obtain a credit report unless the lender is otherwise prepared to make a loan to a particular consumer, Because obtaining a credit report will add some cost, the Bureau expects that lenders will order such reports only after determining that the consumer otherwise satisfies the ability-to-repay test so as to avoid incurring these costs for applicants who would be declined without regard to the contents of the credit report. For the reasons previously discussed, the Bureau believes that verification evidence is critical to ensuring that consumers in fact have the ability to repay a loan, and that therefore the costs are justified to achieve the objectives of the proposal.

The Bureau invites comment on whether to require lenders to obtain credit reports from a national credit reporting agency and from a registered information system. In particular, and in accordance with the recommendation of the Small Business Review Panel, the Bureau invites comments on ways of reducing the operational burden for small businesses of verifying consumers' payments under major financial obligations.

5(c)(3)(ii)(C)

Proposed § 1041.5(c)(3)(ii)(C) would specify that for a consumer's required payments under court- or government agency-ordered child support obligations, the applicable verification evidence would be a national consumer report, which also serves as verification evidence for a consumer's required payments under debt obligations, in accordance with proposed § 1041.5(c)(3)(ii)(B). The Bureau anticipates that some required payments under court- or government agency-ordered child support obligations will not appear in a national consumer report. To the extent the national consumer report omits information for a required payment, the lender could simply base its projections on the amount and timing stated by the consumer, if any. The Bureau intends this clarification to address concerns from some lenders, including from SERs, that a requirement to obtain verification evidence for payments under court- or government agency-ordered child support obligations from sources other than a national consumer report would be onerous and create great uncertainty.

5(c)(3)(ii)(D)

Proposed § 1041.5(c)(3)(ii)(D) would specify that for a consumer's housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained by the lender), the applicable verification evidence would be either a reliable transaction record (or records) of recent housing expense payments or a lease, or an amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer.

Proposed comment 5(c)(3)(ii)(D)-1 explains that the proposed provision means a lender would have three methods that it could choose from for complying with the requirement to obtain verification evidence for a consumer's housing expense. Proposed comment 5(c)(3)(ii)(D)-1.i explains that under the first method, which could be used for a consumer whose housing expense is a mortgage payment, the lender may obtain a national consumer report that includes the mortgage payment. A lender would be required to obtain a national consumer report as verification evidence of a consumer's payments under debt obligations generally, pursuant to proposed § 1041.5(c)(3)(ii)(B). A lender's compliance with that requirement would satisfy the requirement in proposed § 1041.5(c)(3)(ii)(D), provided the consumer's housing expense is a mortgage payment and that mortgage payment appears in the national consumer report the lender obtains.

Proposed comment 5(c)(3)(ii)(D)-1.ii explains that the second method is for the lender to obtain a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. It clarifies that for purposes of this method, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer. This method mirrors options a lender would have for obtaining verification evidence for net income. Accordingly, data derived from a record of depository account transactions or of prepaid account transactions, such as data from account data aggregator services that obtain and categorize consumer deposit account and other account transaction data, would also generally satisfy the requirement. Bureau staff have met with service providers that state that they currently provide services to lenders and are typically able to identify, for example, how much a particular consumer expends on housing expense as well as other categories of expenses.

Proposed comment 5(c)(3)(ii)(D)-1.iii explains that the third method is for a lender to use an amount determined under a reliable method of estimating a consumer's share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. Proposed comment 5(c)(3)(ii)(D)-1.iii provides, as an example, that a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (*e.g.*, in the same census tract) where the consumer resides. It provides that, alternatively, a lender may estimate individual or household housing expense based on housing expense and other data (*e.g.*, residence location) reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers' shares of housing expense. It further explains that a lender may estimate a consumer's share of household expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

Several SERs expressed concern during the SBREFA process that the Bureau's approach to housing expense verification described in the Small Business Review Panel Outline was burdensome and impracticable for many consumers and lenders. Several lender representatives expressed similar concerns during the Bureau's outreach to industry. The Small Business Review Panel Outline referred to lender verification of a consumer's rent or mortgage payment using, for example, receipts, cancelled checks, a copy of a lease, and bank account records. But some SERs and other lender representatives stated many consumers would not have these types of documents readily available. Few consumers receive receipts or cancelled checks for rent or mortgage payments, they stated, and bank account statements may simply state the check number used to make a payment, providing no way of confirming the purpose or nature of the payment. Consumers with a lease would not typically have a copy of the lease with them when applying for a covered loan, they stated, and subsequently locating and transmitting or delivering a copy of the lease to a lender would be unduly burdensome, if not impracticable, for both consumers and lenders.

The Bureau believes that many consumers would have paper or electronic records that they could provide to a lender to establish their housing expense. In addition, as discussed above, information presented to the Bureau during outreach suggests that data aggregator services may be able to electronically and securely obtain and categorize, with a consumer's consent, the consumer's deposit account or other account transaction data to reliably identify housing expenses payments and other categories of expenses.

Nonetheless, the Bureau intends its proposal to be responsive to these concerns by providing lenders with multiple options for obtaining verification evidence for a consumer's housing expense, including by using estimates based on the housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loans. The Bureau's proposal also is intended to facilitate automation of the methods of obtaining the verification evidence, making projections of a consumer's housing expense, and calculating the amounts for an ability-to-repay determination, such as residual income.

A related concern raised by SERs is that a consumer may be the person legally obligated to make a rent or mortgage payment but may receive contributions toward it from other household members, so that the payment the consumer makes, even if the consumer can produce a record of it, is much greater than the consumer's own housing expense. Similarly, a consumer may make payments in cash to another person, who then makes the payment to a landlord or mortgage servicer covering the housing expenses of several residents. During outreach with industry, one lender stated that many of its consumers would find requests for documentation of housing expense to be especially intrusive or offensive, especially consumers with informal arrangements to pay rent for a room in someone else's home.

To address these concerns, the Bureau is proposing the option of estimating a consumer's housing expense based on the individual or apportioned household housing expenses of similarly situated consumers with households in the locality. The Bureau believes the proposed approach would address the concerns raised by SERs and other lenders while also reasonably accounting for the portion of a consumer's net income that is consumed by housing expenses and, therefore, not available for payments under a prospective loan. The Bureau notes that if the method the lender uses to obtain verification evidence of housing expense for a consumer—including the estimated method—indicates a higher housing expense amount than the amount in the consumer's statement under proposed § 1041.5(c)(3)(i), then proposed § 1041.5(c)(1) would generally require a lender to rely on the higher amount indicated by the verification evidence. Accordingly, a lender may prefer use one of the other two methods for obtaining verification evidence, especially if doing so would result in verification evidence indicating a housing expense equal to that in the consumer's written statement of housing expense.

The Bureau recognizes that in some cases the consumer's actual housing expense may be lower than the estimation methodology would suggest but may not be verifiable through documentation. For example, some consumers may live for a period of time rent-free with a friend or relative. However, the Bureau does not believe it is possible to accommodate such situations without permitting lenders to rely solely on the consumer's statement of housing expenses, and for the reasons previously discussed the Bureau believes that doing so would jeopardize the objectives of the proposal. The Bureau notes that the approach it is proposing is consistent with the recommendation of the Small Dollar Roundtable which recommended that the Bureau permit rent to be verified through a "geographic market-specific . . . valid, reliable proxy."

The Bureau invites comment on whether the proposed methods of obtaining verification evidence for housing expense are appropriate and adequate.

§ 1041.6 Additional Limitations on Lending—Covered Short-Term Loans

Background

Proposed § 1041.6 would augment the basic ability-to-repay determination required by proposed § 1041.5 in circumstances in which the consumer's recent borrowing history or current difficulty repaying an outstanding loan provides important evidence with respect to the consumer's financial capacity to afford a new covered short-term loan. In these circumstances, proposed § 1041.6 would require the lender to factor this evidence into the ability-to-repay determination and, in certain instances, would prohibit a lender from making a new covered short-term loan under proposed § 1041.5 to the consumer for 30 days. The Bureau proposes the additional requirements in § 1041.6 for the same basic reason that it proposes § 1041.5: To prevent the unfair and abusive practice identified in proposed § 1041.4, and the consumer injury that results from it. The Bureau believes that these additional requirements may be needed in circumstances in which proposed § 1041.5 alone may not be sufficient to prevent a lender from making a covered short-term loan that the consumer might not have the ability to repay.

Proposed § 1041.6 would generally impose a presumption of unaffordability on continued lending where evidence suggests that the prior loan was not affordable for the consumer such that the consumer may have particular difficulty repaying a new covered short-term loan. Specifically, such a presumption would apply when a consumer seeks a covered short-term loan during the term of a covered short-term loan made under proposed § 1041.5 or a covered longer-term balloon-payment loan made under proposed § 1041.9 and for 30 days thereafter, or seeks to take out a covered short-term loan when there are indicia that an outstanding loan with the same lender or its affiliate is unaffordable for the consumer. Proposed § 1041.6 would also impose a mandatory cooling-off period prior to a lender making a fourth loan covered short-term loan in a sequence and would prohibit lenders from making a covered short-term loan under proposed § 1041.5 during the term of and for 30 days thereafter a covered short-term loan made under proposed § 1041.7.

A central component of the preventive requirements in proposed § 1041.6 is the concept of a reborrowing period—a period following the payment date of a prior loan during which a consumer's borrowing of a covered short-term loan is deemed evidence that the consumer is seeking additional credit because the prior loan was unaffordable. When consumers have the ability to repay a covered short-term loan, the loan should not cause consumers to have the need to reborrow shortly after repaying the loan. As discussed in Market Concerns—Short-Term Loans, however, the Bureau believes that the fact that covered short-term loans require repayment so quickly after consummation makes such loans more difficult for consumers to repay the loan consistent with their other major financial obligations and basic living expenses without needing to reborrow. Moreover, most covered short-term loans—including payday loans and short-term vehicle title loans—also require payment in a single lump sum, thus exacerbating the challenge of repaying the loan without needing to reborrow.

For these loans, the Bureau believes that the fact that a consumer returns to take out another covered short-term loan shortly after having a previous covered short-term loan outstanding frequently indicates that the consumer did not have the ability to repay the prior loan and meet the consumer's other major financial obligations and basic living expenses. This also may provide strong evidence that the consumer will not be able to afford a new covered short-term loan. A second covered short-term loan shortly following a prior covered short-term loan may result from a financial shortfall caused by repayment of the prior loan.

Frequently, reborrowing occurs on the same day that a loan is due, either in the form of a rollover (where permitted by State law) or a new loan taken out on the same day that the prior loan was repaid. Some States require a cooling-off period between loans, typically 24 hours, and the Bureau has found that in those States, if consumers take out successive loans, they generally do so at the earliest time that is legally permitted.[559] The Bureau interprets these data to indicate that these consumers could not afford to repay the full amount of the loan when due and still meet their financial obligations and basic living expenses.

Whether a particular loan taken after a consumer has repaid a prior loan (and after the expiration of any mandated cooling-off period) is a reborrowing prompted by unaffordability of the prior payment is less facially evident. The fact that consumers may cite a particular income or expense shock is not dispositive since a prior unaffordable loan may be the reason that the consumer cannot absorb the new change. On balance, the Bureau believes that for new loans taken within a short period of time after a prior loan ceases to be outstanding, the most likely explanation is the unaffordability of the prior loan, *i.e.*, the fact that the size of the payment obligation on the prior loan left these consumers with insufficient income to make it through their monthly expense cycle.

To provide a structured process that accounts for the likelihood that the unaffordability of an existing or prior loan is driving reborrowing and that ensures a rigorous analysis of consumers' individual circumstances, the Bureau believes that the most appropriate approach may be a presumptions framework rather than an open-ended inquiry. The Bureau is thus proposing to delineate a specific reborrowing period—*i.e.*, a period during which a new loan will be presumed to be a reborrowing.[560]

In determining the appropriate length of the reborrowing period, the Bureau considered several time periods. In particular, in addition to the 30-day period being proposed, the Bureau considered periods of 14, 45, 60, or 90 days in length. The Bureau also considered an option that would tie the length of the reborrowing period to the term of the preceding loan. In evaluating the alternative options for defining the reborrowing period (and in turn the loan sequence definition), the Bureau sought to strike a balance between a reborrowing period that would be too short, thereby not capturing substantial numbers of subsequent loans that are in fact the result of the spillover effect of the unaffordability of the prior loan and inadequately preventing consumer injury, and a reborrowing period that would be too long, thereby covering substantial numbers of subsequent loans that are the result of a new need for credit, independent of such effects. This concept of a reborrowing period is intertwined with the definition of loan sequence. Under proposed § 1041.2(a)(12), loan sequence is defined as a series of consecutive or concurrent covered short-term loans in which each of the loans is made while the consumer currently has an outstanding covered short-term loan or within 30 days after the consumer ceased to have a covered short-term loan outstanding.

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[559] *CFPB Report on Supplemental Findings*, at ch. 4.

[560] Reborrowing takes several forms in the market for covered short-term loans. As used throughout this proposal, reborrowing and the reborrowing period include any rollovers or renewals of a loan, as well as new extensions of credit. A loan may be a "rollover" if, at the end of a loan term, a consumer only pays a fee or finance charge in order to "roll over" a loan rather than repaying the loan. Similarly, the laws of some States permit a lender to "renew" a consumer's outstanding loan with the payment of a finance charge. More generally, a consumer may repay a loan and then return to take out a new loan within a fairly short period of time. The Bureau thus considers rollovers, renewals, and reborrowing within a short period of time after repaying the prior loan to be functionally the same sort of transaction with regard to the presumptions of unaffordability—and other lending restrictions in proposed § 1041.6—and generally uses the term reborrowing to cover all three scenarios, along with concurrent borrowing by a consumer whether from the same lender or its affiliate or from different, unaffiliated lenders.

The Bureau's 2014 Data Point analyzed repeated borrowing on payday loans using a 14-day reborrowing period reflecting a bi-weekly pay cycle, the most common pay cycle for consumers in this market.[561] For the purposes of the 2014 Data Point, a loan was considered part of a sequence if it was made within 14 days of the prior loan. The Bureau adopted this approach in the Bureau's early research in order to obtain a relatively conservative measure of reborrowing activity relative to the most frequent date for the next receipt of income. However, the 14-day definition had certain disadvantages, including the fact that many consumers are paid on a monthly cycle, and a 14-day definition thus does not adequately reflect how different pay cycles can cause slightly different reborrowing patterns.

Upon further consideration of what benchmarks would sufficiently protect consumers from reborrowing harm, the Bureau turned to the typical consumer expense cycle, rather than the typical income cycle, as the most appropriate metric.[562] Consumer expense cycles are typically a month in length with housing expenses, utility payments, and other debt obligations generally paid on a monthly basis. Thus, where repaying a loan causes a shortfall, the consumer may seek to return during the same expense cycle to get funds to cover downstream expenses.

The proposals under consideration in the Small Business Review Panel Outline relied on a 60-day reborrowing period based upon the premise that consumers for whom repayment of a loan was unaffordable may nonetheless be able to juggle their expenses for a period of time so that the spillover effects of the loan may not manifest until the second expense cycle following repayment. Upon additional analysis and extensive feedback from a broad range of stakeholders, the Bureau has now tentatively concluded that the 30-day definition incorporated into the Bureau's proposal may strike a more appropriate balance between competing considerations.

Because so many expenses are paid on a monthly basis, the Bureau believes that loans obtained during the same expense cycle are relatively likely to indicate that repayment of a prior loan may have caused a financial shortfall. Additionally, in analysis of supervisory data, the Bureau has found that a considerable segment of consumers who repay a loan without an immediate rollover or reborrowing nonetheless return within the ensuing 30 days to reborrow.[563] Accordingly, if the consumer returns to take out another covered short-term loan—or, as described with regard to proposed § 1041.10, certain types of covered longer-term loans—within the same 30-day period, the Bureau believes that this pattern of reborrowing indicates that the prior loan was unaffordable and that the following loan may likewise be unaffordable.

On the other hand, the Bureau believes that for loans obtained more than 30 days after a prior loan, there is an increased possibility that the loan is prompted by a new need on the part of the borrower, not directly related to potential financial strain from repaying the prior loan. While a previous loan's unaffordability may cause some consumers to need to take out a new loan as many as 45 days or even 60 days later, the Bureau believes that the effects of the previous loan are more likely to dissipate once the consumer has completed a full expense cycle following the previous loan's conclusion. Accordingly, the Bureau believes that a 45-day or 60-day definition may be too broad. A reborrowing period which varies with the length of the preceding loan term would be operationally complex for lenders to implement and, for consumers paid weekly or bi-weekly, may also be too narrow.

Accordingly, using this 30-day reborrowing window, the Bureau is proposing a presumption of unaffordability in situations in which the Bureau believes that the fact that the consumer is seeking to take out a new covered short-term loan during the term of, or shortly after repaying, a prior loan generally suggests that the new loan, like the prior loan, will exceed the consumer's ability to repay. The presumption is based on concerns that the prior loan may have triggered the need for the new loan because it exceeded the consumer's ability to repay, and that, absent a sufficient improvement of the consumer's financial capacity, the new loan will also be unaffordable for the consumer.

The presumption can be overcome, however, in circumstances that suggest that there is sufficient reason to believe that the consumer would, in fact, be able to afford the new loan even though he or she is seeking to reborrow during the term of or shortly after a prior loan. The Bureau recognizes, for example, that there may be situations in which the prior loan would have been affordable but for some unforeseen disruption in income that occurred during the prior expense cycle and which is not reasonably expected to recur during the term of the new loan. The Bureau also recognizes that there may be circumstances, albeit less common, in which even though the prior loan proved to be unaffordable, a new loan would be affordable because of a reasonably projected increase in net income or decrease in major financial obligations—for example, if the consumer has obtained a second job that will increase the consumer's residual income going forward or the consumer has moved since obtaining the prior loan and will have lower housing expenses going forward.

Proposed § 1041.6(b) through (d) define a set of circumstances in which the Bureau believes that a consumer's recent borrowing history makes it unlikely that the consumer can afford a new covered short-term loan, including concurrent loans.[564] In such circumstances, a consumer would be presumed to not have the ability to repay a covered short-term loan under proposed § 1041.5. Proposed § 1041.6(e) would define the additional determinations that a lender would be required to make in cases where the presumption applies in order for the lender's determination under proposed § 1041.5 that the consumer will have the ability to repay a new covered short-term loan to be reasonable despite the unaffordability of the prior loan.

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[561] *CFPB Data Point: Payday Lending,* at 7.

[562] Researchers in an industry-funded study also concluded that "an entire billing cycle of most bills—rent, other loans, utilities, etc.—and at least one paycheck" is the "appropriate measurement" for purposes of determining whether a payday loan leads to a "cycle of debt." Marc Anthony Fusaro & Patricia J. Cirillo, *Do Payday Loans Trap Consumers in a Cycle of Debt,* (November 16, 2011), *available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960776.*

[563] *CFPB Report on Supplemental Findings,* at ch. 5.

[564] The Bureau notes that the proposed ability-to-repay requirements do not prohibit a consumer from taking out a covered short-term loan when the consumer has one or more covered short-term loans outstanding, but instead account for the presence of concurrent loans in two ways: (1) A lender would be required to obtain verification evidence about required payments on debt obligations, which are defined under proposed § 1041.5(a)(2) to include outstanding covered loans, and (2) any concurrent loans would be counted as part of the loan sequence for purposes of applying the presumptions and prohibitions under proposed § 1041.6. This

The Bureau believes that it is extremely unlikely that a consumer who twice in succession returned to reborrow during the reborrowing period and who seeks to reborrow again within 30 days of having the third covered short-term loan outstanding would be able to afford another covered short-term loan. Because of lenders' strong incentives to facilitate reborrowing that is beyond the consumer's ability to repay, the Bureau believes it is appropriate, in proposed § 1041.6(f), to impose a mandatory 30-day cooling-off period after the third covered short-term loan in a sequence, during which time the lender cannot make a new covered short-term loan under proposed § 1041.5 to the consumer. This period would ensure that after three consecutive ability-to-repay determinations have proven inconsistent with the consumer's actual experience, the lender could not further worsen the consumer's financial situation by encouraging the consumer to take on additional unaffordable debt. Additionally, proposed § 1041.6(g) would prohibit a lender from combining sequences of covered short-term loans made under proposed § 1041.5 with loans made under the conditional exemption in proposed § 1041.7, as discussed further below.

The Bureau notes that this overall proposed approach is fairly similar to the framework included in the Small Business Review Panel Outline. There, the Bureau included a presumption of inability to repay for the second and third covered short-term loan and covered longer-term balloon-payment loan in a loan sequence and a mandatory cooling-off period following the third loan in a sequence. The Bureau considered a "changed circumstances" standard for overcoming the presumption that would have required lenders to obtain and verify evidence of a change in consumer circumstances indicating that the consumer had the ability to repay the new loan according to its terms. The Bureau also, as noted above, included a 60-day reborrowing period (and corresponding definition of loan sequence) in the Small Business Review Panel Outline.

SERs and other stakeholders that offered feedback on the Outline urged the Bureau to provide greater flexibility with regard to using a presumptions framework to address concerns about repeated borrowing despite the contemplated requirement to determine ability to repay. The SERs and other stakeholders also urged the Bureau to provide greater clarity and flexibility in defining the circumstances that would permit a lender to overcome the presumption of unaffordability.

The Small Business Review Panel Report recommended that the Bureau request comment on whether a loan sequence could be defined with reference to a period shorter than the 60 days under consideration during the SBREFA process. The Small Business Review Panel Report further recommended that the Bureau consider additional approaches to regulation, including whether existing State laws and regulations could provide a model for elements of the Bureau's proposed interventions. In this regard, the Bureau notes that some States have cooling-off periods of one to seven days, as well as longer periods that apply after a longer sequence of loans. The Bureau's prior research has examined the effectiveness of these cooling-off periods[565] and, in the CFPB Report on Supplemental Findings, the Bureau is publishing research showing how different definitions of loan sequence affect the number of loan sequences and the number of loans deemed to be part of a sequence.[566] In the CFPB Report on Supplemental Findings, the Bureau is publishing additional analysis on the impacts of State cooling-off periods.[567] The latter analysis is also discussed in Market Concerns—Short-Term Loans.

The Bureau has made a number of adjustments to the presumptions framework in response to this feedback. For instance, the Bureau is proposing a 30-day definition of loan sequence and 30-day cooling-off period rather than a 60-day definition of loan sequence and 60-day cooling-off period. The Bureau has also provided greater specificity and flexibility about when a presumption of unaffordability would apply, for example, by proposing certain exceptions to the presumption of unaffordability for a sequence of covered short-term loans. The proposal also would provide somewhat more flexibility about when a presumption of unaffordability could be overcome by permitting lenders to determine that there would be sufficient improvement in financial capacity for the new loan because of a one-time drop in income since obtaining the prior loan (or during the prior 30 days, as applicable). The Bureau has also continued to assess potential alternative approaches to the presumptions framework, discussed below.

The Bureau solicits comment on all aspects of the proposed presumptions of unaffordability and mandatory cooling-off periods, and other aspects of proposed § 1041.6, including the circumstances in which the presumptions apply (*e.g.*, the appropriate length of the reborrowing period and the appropriateness of other circumstances giving rise to the presumptions), the requirements for overcoming a presumption of unaffordability, and the circumstances in which a lender would be prohibited from making a covered short-term loan under proposed § 1041.5 during a 30-day cooling-off period or cooling-off period of a different length. In addition, and consistent with the recommendations of the Small Business Review Panel Report, the Bureau solicits comment on whether the 30-day reborrowing period is appropriate for the presumptions and prohibitions, or whether a longer or shorter period would better address the Bureau's concerns about repeat borrowing. The Bureau also seeks comment on whether lenders should be required to provide disclosures as part of the origination process for covered loans and, if so, whether an associated model form would be appropriate; on the specific elements of such disclosures; and on the burden and benefits to consumers and lenders of providing disclosures as described above.

Alternatives Considered

The Bureau has considered a number of alternative approaches to address reborrowing on covered short-term loans in circumstances indicating the consumer was unable to afford the prior loan.[568] One possible approach would

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approach differs from the conditional exemption for covered short-term loans under proposed § 1041.7 (*i.e.*, the alternative to the ability-to-repay requirements), which generally prohibits a Section 7 loan if the consumer has an outstanding covered loan. See the section-by-section analysis of proposed § 1041.7(c)(1) for further discussion, including explanation of the different approaches and notation of third party data regarding the prevalence of concurrent borrowing in this market.

[565] *See CFPB Data Point: Payday Lending*, at 8.

[566] *CFPB Report on Supplemental Findings*, at ch. 5.

[567] *CFPB Report on Supplemental Findings*, at ch. 4.

[568] In addition to the alternatives discussed, the Bureau tested draft disclosure forms in preparing

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be to limit the overall number of covered short-term loans that a consumer could take within a specified period of time, rather than using the loan sequence and presumption concepts as part of the determination of consumers' ability to repay subsequent loans in a sequence and when and if a mandatory cooling-off period should apply. By imposing limits on reborrowing while avoiding the complexity of the presumptions, this approach could provide a more flexible way to protect consumers whose borrowing patterns suggest that they may not have the ability to repay their loans. This approach could, for example, limit the number of covered short-term loans to three within a 120-day period when the loan has a duration of 15 days or less. For loans with a longer duration, the applicable period of time correspondingly could be longer. However, depending on individual consumers' usage patterns, such an approach could also result in much longer cooling-off periods for individuals who borrow several times early in the designated period. Alternatively, a similar approach could impose a cooling-off period of varying lengths depending on the consumer's time in debt during a specified period.

The Bureau has also considered an alternative approach under which, instead of defining the circumstances in which a formal presumption of unaffordability applies and the determinations that a lender must make when such a presumption applies to a transaction, the Bureau would identify circumstances indicative of a consumer's inability to repay that would be relevant to whether a lender's determination under proposed § 1041.5 is reasonable. This approach would likely involve a number of examples of indicia requiring greater caution in underwriting and examples of countervailing factors that might support the reasonableness of a lender's determination that the consumer could repay a subsequent loan despite the presence of such indicia. This alternative approach would be less prescriptive than the proposed framework, and thus leave more discretion to lenders to make such a determination. However, it would also provide less certainty as to when a lender's particular ability-to-repay determination is reasonable.

In addition, the Bureau has considered whether there is a way to account for unusual expenses within the presumptions framework without creating an exception that would swallow the rule. In particular, the Bureau considered permitting lenders to overcome the presumptions of unaffordability in the event that the consumer provided evidence that the reason the consumer was struggling to repay the outstanding loan or was seeking to reborrow was due to a recent unusual and non-recurring expense. For example, under such an approach, a lender could overcome the presumption of unaffordability by finding that the reason the consumer was seeking a new covered short-term loan was as a result of an emergency car repair or furnace replacement or an unusual medical expense during the term of the prior loan or the reborrowing period, so long as the expense is not reasonably likely to recur during the period of the new loan. The Bureau considered including such circumstances as an additional example of sufficient improvement in financial capacity, as described with regard to proposed § 1041.6(e) below.

While such an addition could provide more flexibility to lenders and to consumers to overcome the presumptions of unaffordability, an unusual and non-recurring expense test would also present several challenges. To effectuate this test, the Bureau would need to define, in ways that lenders could implement, what would be a qualifying "unusual and non-recurring expense," a means of assessing whether a new loan was attributable to such an expense rather than to the unaffordability of the prior loan, and standards for how such an unusual and non-recurring expense could by documented (*e.g.*, through transaction records). Such a test would have substantial implications for the way in which the ability-to-repay requirements in proposed § 1041.5 (and proposed § 1041.9 for covered longer-term loans) address the standards for basic living expenses and accounting for potential volatility over the term of a loan. Most significantly, the Bureau is concerned that if a lender were permitted to overcome the presumption of unaffordability by finding that the consumer faced an unusual and non-recurring expense during repayment of the prior or outstanding loan, this justification would be invoked in cases in which the earlier loan had, in fact, been unaffordable. As discussed above, the fact that a consumer may cite a particular expense shock when seeking to reborrow does not necessarily mean that a recent prior loan was affordable; if a consumer, in fact, lacked the ability to repay the prior loan, it would be a substantial factor in why the consumer could not absorb the expense. Accordingly, the Bureau believes that it may be difficult to parse out causation and to differentiate between types of expense shocks and the reasonableness of lenders' ability-to-repay determinations where such shocks are asserted to have occurred.

In light of these competing considerations, the Bureau has chosen to propose the approach of supplementing the proposed § 1041.5 determination with formal presumptions. The Bureau is, however, broadly seeking comment on alternative approaches to addressing the issue of repeat borrowing in a more flexible manner, including the alternatives described above and on any other framework for assessing consumers' borrowing history as part of an overall determination of ability to repay. The Bureau specifically seeks comment on whether to apply a presumption of unaffordability or mandatory cooling-off period based on the total number of loans that a consumer has obtained or the total amount of time in which a consumer has been in debt during a specified period of time. The Bureau also solicits comment on the alternative of defining indicia of unaffordability, as described above. For such alternatives, the Bureau solicits comment on the appropriate time periods and on the manner in which such frameworks would address reborrowing on loans of different lengths. In addition, the Bureau specifically seeks comment on whether to permit lenders to overcome a presumption of unaffordability by finding that the consumer had experienced an unusual and non-recurring expense and, if so, on measures to address the challenges described above.

Legal Authority

As discussed in the section-by-section analysis of proposed § 1041.4 above, the Bureau believes that it may be an unfair and abusive practice to make a covered

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for the rulemaking. These are discussed in the FMG report and in part III above. Among other forms, the consumer testing obtained feedback on disclosure forms that provided information about certain restrictions on reborrowing covered short-term loans made under proposed § 1041.5. In particular, the forms explained to consumers that they might not be able to roll over or take out a new loan shortly after paying off the loan for which the consumer was applying. The forms also provided the loan payment date and amount due, along with a warning that consumers should not take out the loan if they could not pay it back by the payment date. During testing, participants were asked about the purpose of the form and whether they believed that their future ability to roll over or take out another loan would be limited. A few participants understood that borrowing would be restricted, but others had further questions about the restrictions and appeared to have difficulty understanding the restrictions. Based on these results, the Bureau is not proposing disclosures regarding the origination of loans under proposed § 1041.5 and the reborrowing restrictions under proposed § 1041.6.

short-term loan without determining that the consumer will have the ability to repay the loan. Accordingly, in order to prevent that unfair and abusive practice, proposed § 1041.5 would require lenders prior to making a covered short-term loan—other than a loan made under the conditional exemption to the ability-to-repay requirements in proposed § 1041.7—to make a reasonable determination that the consumer has sufficient income after meeting major financial obligations, to make payments under a prospective covered short-term loan and to continue meeting basic living expenses. Proposed § 1041.6 would augment the basic ability-to-repay determination required by proposed § 1041.5 in circumstances in which the consumer's recent borrowing history or current difficulty repaying an outstanding loan provides important evidence with respect to the consumer's financial capacity to afford a new covered short-term loan. The Bureau is proposing § 1041.6 based on the same source of authority that serves as the basis for proposed § 1041.5: The Bureau's authority under section 1031(b) of the Dodd-Frank Act, which provides that the Bureau's rules may include requirements for the purposes of preventing unfair, deceptive, or abusive acts or practices.[569]

As with proposed § 1041.5, the Bureau proposes the requirements in § 1041.6 to prevent the unfair and abusive practice identified in proposed § 1041.4, and the consumer injury that results from it. The Bureau believes that the additional requirements of proposed § 1041.6 may be needed in circumstances in which proposed § 1041.5 alone may not be sufficient to prevent a lender from making a covered short-term loan that would exacerbate the impact of an initial unaffordable loan. Accordingly, the Bureau believes that the requirements set forth in proposed § 1041.6 bear a reasonable relation to preventing the unfair and abusive practice identified in proposed § 1041.4. In addition, as further discussed in the section-by-section analysis of proposed § 1041.6(h), the Bureau proposes that provision pursuant to both the Bureau's authority under section 1031(b) of the Dodd-Frank Act and the Bureau's authority under section 1022(b)(1) of the Dodd-Frank Act to prevent evasions of the purposes and objectives of Federal consumer financial laws, including Bureau rules issued pursuant to rulemaking authority provided by Title X of the Dodd-Frank Act.[570]

6(a) Additional Limitations on Making a Covered Short-Term Loan Under § 1041.5

Proposed § 1041.6(a) would set forth the general additional limitations on making a covered short-term loan under proposed § 1041.5. Proposed § 1041.6(a) would provide that when a consumer is presumed not to have the ability to repay a covered short-term loan under proposed § 1041.6(b), (c), or (d), a lender's determination that the consumer will have the ability to repay the loan is not reasonable, unless the lender can overcome the presumption of unaffordability. Proposed § 1041.6(a) would further provide that a lender is prohibited from making a covered short-term loan to a consumer if the mandatory cooling-off periods in proposed § 1041.6(f) or (g) apply. In order to determine whether the presumptions and prohibitions in proposed § 1041.6 apply to a particular transaction, proposed § 1041.6(a)(2) would require a lender to obtain and review information about the consumer's borrowing history from its own records, the records of its affiliates, and a consumer report from an information system currently registered under proposed § 1041.17(c)(2) or (d)(2), if one is available.

The Bureau notes that, as drafted, the proposed presumptions and prohibitions in § 1041.6 would apply only to making specific additional covered short-term loans. The Bureau solicits comment on whether a presumption of unaffordability, mandatory cooling-off periods, or other additional limitations on lending also would be appropriate for transactions involving an increase in the credit available under an existing covered loan, making an advance on a line of credit under a covered short-term loan, or other circumstances that may evidence repeated borrowing. If such limitations would be appropriate, the Bureau requests comment on how they should be tailored in light of relevant considerations.

In this regard, the Bureau further notes that the presumptions of unaffordability depend on the definition of outstanding loan in proposed § 1041.2(a)(15) and therefore would not cover circumstances in which the consumer is more than 180 days delinquent on the prior loan. The Bureau solicits comment on whether additional requirements should apply to the ability-to-repay determination for a covered short-term loan in these circumstances; for instance, whether to generally prohibit lenders from making a new covered short-term loan to a consumer for the purposes of satisfying a delinquent obligation on an existing loan with the same lender or its affiliate. In addition, the Bureau solicits comment on whether additional requirements should apply to covered short-term loans that are lines of credit; for instance, whether a presumption of unaffordability should apply at the time of the ability-to-repay determination required under § 1041.5(b)(1)(ii) for a consumer to obtain an advance under a line of credit more than 180 days after the date of a prior ability-to-repay determination.

The Bureau also solicits comment on the proposed standard in § 1041.6(a) and on any alternative approaches to the relationship between proposed § 1041.5 and proposed § 1041.6 that would prevent consumer harm while reducing the burden on lenders. In particular, the Bureau solicits comment on whether the formal presumption and prohibition approach in § 1041.6 is an appropriate supplement to the § 1041.5 determination.

6(a)(1) General

Proposed § 1041.6(a)(1) would provide that if a presumption of unaffordability applies, a lender's determination that the consumer will have the ability to repay a covered short-term loan is not reasonable unless the lender makes the additional determination set forth in proposed § 1041.6(e), and discussed in detail below, and the requirements set forth in proposed § 1041.5 are satisfied. Under proposed § 1041.6(e), a lender can make a covered short-term loan notwithstanding the presumption of unaffordability if the lender reasonably determines, based on reliable evidence, that there will be sufficient improvement in the consumer's financial capacity such that the consumer would have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. Proposed § 1041.6(a)(1) would further provide that a lender must not make a covered short-term loan under proposed § 1041.5 to a consumer during the mandatory cooling-off periods specified in proposed § 1041.6(f) and (g).

Proposed comment 6(a)(1)-1 clarifies that the presumptions and prohibitions would apply to making a covered short-term loan and are triggered, if applicable, at the time of consummation of the new covered short-term loan. Proposed comment 6(a)(1)-2 clarifies that the presumptions and prohibitions would apply to rollovers and renewals of a covered short-term loan when such transactions are permitted under State law. Proposed comment 6(a)(1)-3 clarifies that a lender's determination that a consumer will have the ability to repay a covered short-term loan is not reasonable within the meaning of proposed § 1041.5 if under proposed § 1041.6 the consumer is presumed to not have the ability to repay the loan and that presumption of unaffordability has not been overcome in the manner set forth in proposed § 1041.6(e). Thus, if proposed § 1041.6 prohibits a lender from making a covered short-term loan, then the lender must not make the loan, regardless of the lender's determination under proposed § 1041.5. Nothing in proposed § 1041.6 would displace the requirements of § 1041.5; on the contrary, the determination under proposed § 1041.6 would be, in effect, an additional component of the proposed § 1041.5 determination of ability to repay in situations in which the basic requirements of proposed § 1041.5 alone would be insufficient to prevent the unfair and abusive practice.

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[569] 12 U.S.C. 5531(b).

[570] 12 U.S.C. 5512(b)(1).

6(a)(2) Borrowing History Review

Proposed § 1041.6(a)(2) would require a lender to obtain and review information about a consumer's borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, and to use this information to determine a potential loan's compliance with the requirements of proposed § 1041.6. Proposed comment 6(a)(2)-1 clarifies that a lender satisfies its obligation under § 1041.6(a)(2) to obtain a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.5(c)(3)(ii)(B) to obtain this same consumer report. Proposed comment 6(a)(2)-2 clarifies that if no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are currently available, the lender is nonetheless required to obtain information about a consumer's borrowing history from the records of the lender and its affiliates.

Based on outreach to lenders, including feedback from SERs, the Bureau believes that lenders already generally review their own records for information about a consumer's history with the lender prior to making a new loan to the consumer. The Bureau understands that some lenders in the market for covered short-term loans also pull a consumer report from a specialty consumer reporting agency as part of standardized application screening, though practices in this regard vary widely across the market.

As detailed below in the section-by-section analysis of proposed §§ 1041.16 and 1041.17, the Bureau believes that information regarding the consumer's borrowing history is important to facilitate reliable ability-to-repay determinations. If the consumer already has a relationship with a lender or its affiliates, the lender can obtain some historical information regarding borrowing history from its own records. However, without obtaining a report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), the lender will not know if its existing customers or new customers have obtained covered short-term loans or a prior covered longer-term balloon-payment loan from other lenders, as such information generally is not available in national consumer reports. Accordingly, the Bureau is proposing in § 1041.6(a)(2) to require lenders to obtain a report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if one is available.

The section-by-section analysis of proposed § 1041.16 and 1041.17, and part VI below explain the Bureau's attempts to minimize burden in connection with furnishing information to and obtaining a consumer report from an information system currently registered pursuant to proposed § 1041.17(c)(2) or (d)(2). Specifically, the Bureau estimates that each report would cost approximately $0.50. Consistent with the recommendations of the Small Business Review Panel Report, the Bureau requests comment on the cost to small entities of obtaining information about consumer borrowing history and on potential ways to further reduce the operational burden of obtaining this information.

6(b) Presumption of Unaffordability for Sequence of Covered Short-Term Loans Made Under § 1041.5

6(b)(1) Presumption

Proposed § 1041.6(b)(1) would provide that a consumer is presumed not to have the ability to repay a covered short-term loan under proposed § 1041.5 during the time period in which the consumer has a covered short-term loan made under proposed § 1041.5 outstanding and for 30 days thereafter. Proposed comment 6(b)(1)-1 clarifies that a lender cannot make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter unless the exception to the presumption applies or the lender can overcome the presumption. A lender would be permitted to overcome the presumption of unaffordability in accordance with proposed § 1041.6(e) for the second and third loan in a sequence, as defined in proposed § 1041.2(a)(12); as noted in proposed comment 6(b)(1)-1, prior to the fourth covered short-term loan in a sequence, proposed § 1041.6(f) would impose a mandatory cooling-off period, as discussed further below.

Proposed § 1041.6(b)(1) would apply to situations in which, notwithstanding a lender's determination prior to consummating an earlier covered short-term loan that the consumer would have the ability to repay the loan according to its terms, the consumer seeks to take out a new covered short-term loan during the term of the prior loan or within 30 days thereafter.

As discussed above in the background to the section-by-section analysis of § 1041.6, the Bureau believes that when a consumer seeks to take out a new covered short-term loan during the term of or within 30 days of having a prior covered short-term loan outstanding, there is substantial reason for concern that the need to reborrow is caused by the unaffordability of the prior loan. The Bureau proposes to use the 30-day reborrowing period discussed above to define the circumstances in which a new loan would be considered a reborrowing. The Bureau believes that even in cases where the determination of ability to repay was reasonable based upon what was known at the time that the prior loan was originated, the fact that the consumer is seeking to reborrow in these circumstances is relevant in assessing whether a new and similar loan—or rollover or renewal of the existing loan—would be affordable for the consumer. For example, the reborrowing may indicate that the consumer's actual basic living expenses exceed what the lender projected for the purposes of § 1041.5 for the prior loan. In short, the Bureau believes that when a consumer seeks to take out a new covered short-term loan that would be part of a loan sequence, there is substantial reason to conduct a particularly careful review to determine whether the consumer can afford to repay the new covered short-term loan.

In addition, the fact that the consumer is seeking to reborrow in these circumstances may indicate that the initial determination of affordability was unreasonable when made. Indeed, the Bureau believes that if, with respect to a particular lender making covered short-term loans pursuant to proposed § 1041.5, a substantial percentage of consumers returned within 30 days to obtain a second loan, that fact would provide evidence that the lender's determinations under proposed § 1041.5 were not reasonable. And this would be even more so the case where a substantial percentage of consumers returned within 30 days of the second loan to obtain a third loan.

Given these considerations, to prevent the unfair and abusive practice identified in proposed § 1041.4, proposed § 1041.6(b) would create a presumption of unaffordability for a covered short-term loan during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter unless the exception in proposed § 1041.6(b)(2) applies. As a result of this presumption, it would not be reasonable for a lender to determine that the consumer will have the ability to repay the new covered short-term loan without taking into account the fact that the consumer did need to reborrow after obtaining a prior loan and making a reasonable determination that the consumer will be able to repay the new covered short-term loan without reborrowing. Proposed § 1041.6(e), discussed below, defines the elements for such a determination.

The Bureau solicits comment on the appropriateness of the proposed presumption to prevent the unfair and abusive practice and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. In particular, the Bureau solicits comment on alternative approaches to preventing consumer harm from repeat borrowing on covered short-term loans, including other methods of supplementing the basic ability-to-repay determination required for a covered short-term loan shortly following a prior covered short-term loan.

The Bureau also solicits comment on whether there are other circumstances—such as a pattern of heavy usage of covered short-term loans that would not meet the proposed definition of a loan sequence or the overall length of time in which a consumer is in debt on covered short-term loans over a specified period of time—that would also warrant a presumption of unaffordability.

6(b)(2) Exception

Proposed § 1041.6(b)(2) would provide an exception to the presumption in proposed § 1041.6(b)(1) where the subsequent covered short-term loan would meet specific conditions. The conditions under either proposed § 1041.6(b)(2)(i)(A) or (B) must be met, along with the condition under proposed § 1041.6(b)(2)(ii). First, under proposed § 1041.6(b)(2)(i)(A), the consumer must have paid the prior covered short-term loan in full and the amount that would be owed by the consumer for the new covered short-term loan could not exceed 50 percent of the amount that the consumer paid on the prior loan. Second, under proposed § 1041.6(b)(2)(i)(B), in the event of a rollover the consumer would not owe more on the new covered short-term loan (*i.e.,* the rollover) than the consumer paid on the prior covered short-term loan (*i.e.,* the outstanding loan that is being rolled over). Third, under proposed § 1041.6(b)(2)(ii), the new covered short-term loan would have to be repayable over a period that is at least as long as the period over which the consumer made payment or payments on the prior loan. Proposed comment 6(b)(2)-1 provides general clarification for the proposed provision.

The rationale for the presumption defined in proposed § 1041.6(b)(1) is generally that the consumer's need to reborrow in the specified circumstances evidences the unaffordability of the prior loan and thus warrants a presumption that the new loan will likewise be unaffordable for the consumer.

But when a consumer is seeking to reborrow no more than half of the amount that the consumer has already paid on the prior loan, including situations in which the consumer is seeking to roll over no more than the amount the consumer repays, the Bureau believes that the predicate for the presumption may no longer apply. For example, if a consumer paid off a prior $400, 45-day duration loan and later returns within 30 days to request a new $100, 45-day duration loan, the lender may be able to reasonably infer that such second $100 loan would be affordable for the consumer, even if a second $400 loan would not be. Given that result, assuming that the lender satisfies the requirements of proposed § 1041.5, the lender may be able to reasonably infer that the consumer will have the ability to repay the new loan for $100. Thus, the Bureau believes that an exception to the presumption of unaffordability may be appropriate in this situation.

However, this is not the case when the amount owed on the new loan would be greater than 50 percent of the amount paid on the prior loan, the consumer would roll over an amount greater than he or she repays, or the term of the new loan would be shorter than the term of the prior loan. For example, if the consumer owes $450 on a covered short-term loan, pays only $100 and seeks to roll over the remaining $350, this result would not support an inference that the consumer will have the ability to repay $350 for the new loan. Accordingly, the new loan would be subject to the presumption of unaffordability. Similarly, with the earlier example, the lender could not infer based on the payment of $400 over 45 days that a consumer could afford $200 in one week. Rather, the Bureau believes that it would be appropriate in such circumstances for the lender to go through the process to overcome the presumption in the manner set forth in proposed § 1041.6(e).

On the basis of the preceding considerations, the Bureau is proposing this exception to the presumption in proposed § 1041.6(b). The Bureau's rationale is the same for the circumstances in both proposed § 1041.6(b)(2)(i)(A) and (B); as explained below, the formula is slightly modified in order to account for the particular nature of the rollover transaction when permitted under applicable State law (termed a renewal in some States).

The Bureau solicits comment on the appropriateness of the proposed exception to the presumption of unaffordability and on any other circumstances that would also warrant an exception to the presumption. In particular, the Bureau solicits comment on the specific thresholds in proposed § 1041.6(b)(2)(i)(A) and (B). In addition, the Bureau solicits comment on the timing requirement in proposed § 1041.6(b)(2)(ii) and whether alternative formulations of the timing requirement would be appropriate; for instance, whether an exception should be available if the new covered short-term loan would be repayable over a period that is proportional to the prior payment history.

6(b)(2)(i)(A)

Proposed § 1041.6(b)(2)(i)(A) would set out the formula for transactions in which the consumer has paid off the prior loan in full and is then returning for a new covered short-term loan during the reborrowing period. Proposed § 1041.6(b)(2)(i)(A) would define paid in full to include the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit such as late fees. Proposed § 1041.6(b)(2)(i)(A) would further specify that to be eligible for the exception, the consumer would not owe, in connection with the new covered short-term loan, more than 50 percent of the amount that the consumer paid on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit such as late fees). Proposed comment 6(b)(2)(i)(A)-1 clarifies that a loan is considered paid in full whether or not the consumer's obligations were satisfied timely under the loan contract and also clarifies how late fees are treated for purposes of the exception requirements. Proposed comment 6(b)(2)(i)(A)-2 provides illustrative examples. The Bureau solicits comment on whether a consumer should be eligible for the exception under proposed § 1041.6(b)(2)(i)(A) when the prior loan was paid in full but the consumer had previously triggered late fees or otherwise was delinquent on payments for the prior loan, as such history of late payments could be a relevant consideration toward whether the consumer has the ability to repay a similarly-structured loan.

6(b)(2)(i)(B)

Proposed § 1041.6(b)(2)(i)(B) would set out the formula for transactions in which the consumer provides partial payment on a covered short-term loan and is seeking to roll over the remaining balance into a new covered short-term loan. Proposed § 1041.6(b)(2)(i)(B) would specify that to be eligible for the exception, the consumer would not owe more on the new covered short-term loan than the consumer paid on the prior covered short-term loan that is being rolled over (including the amount financed and charges included in the total cost of credit, but excluding any charges that are excluded from the total cost of credit such as late fees). Proposed comment 6(b)(2)(i)(B)-1 clarifies that rollovers are subject to applicable State law (sometimes called renewals) and cross-references proposed comment 6(a)(1)-2. Proposed comment 6(b)(2)(i)(B)-1 also clarifies that the prior covered short-term loan is the outstanding loan being rolled over, the new covered short-term loan is the rollover, and that for the conditions of § 1041.6(b)(2)(i)(B) to be satisfied, the consumer will repay at least 50 percent of the amount owed on the loan being rolled over. Proposed comment 6(b)(2)(i)(B)-2 provides an illustrative example.

As discussed above with regard to the reborrowing period, the Bureau considers rollovers and other forms of reborrowing within 30 days of the prior loan outstanding to be the same. Given the particular nature of the rollover transaction when permitted by State law, slightly different calculations are needed for the exception to effectuate this equal treatment.

6(b)(2)(ii)

Proposed § 1041.6(b)(2)(ii) would set forth the condition that the new covered short-term loan be repayable over a period that is at least as long as the period over which the consumer made payment or payments on the prior covered short-term loan. The Bureau believes that both the amount of the new loan and the duration of the new loan relative to the prior loan are important to determining whether there is a risk that the second loan would be unaffordable and thus whether a presumption should be applied. Absent this condition, situations could arise in which the 50 percent condition were satisfied but where the Bureau would still have concern about not applying the presumption. As noted above, from the fact that the consumer paid in full a $450 loan with a term of 45 days, it does not follow that the consumer can afford a $200 loan with a term of one week, even though $200 is less than 50 percent of $450. In that instance, the consumer would owe $200 in only a week, which may be very difficult to repay.

6(c) Presumption of Unaffordability for a Covered Short-Term Loan Following a Covered Longer-Term Balloon-Payment Loan Made Under § 1041.9

Proposed § 1041.6(c) would provide that a consumer is presumed not to have the ability to repay a covered short-term loan under proposed § 1041.5 during the time period in which the consumer has a covered longer-term balloon-payment loan made under proposed § 1041.9 outstanding and for 30 days thereafter. The presumption in proposed § 1041.6(c) uses the same 30-day reborrowing period used in proposed § 1041.6(b) and discussed in the background to the section-by-section analysis of § 1041.6 to define when there is sufficient risk that the need for the new loan was triggered by the unaffordability of the prior loan and, as a result, warrants a presumption that the new loan would be unaffordable.

The Bureau believes that when a consumer seeks to take out a new covered short-term loan that would be part of a loan sequence, there is substantial reason for concern that the need to reborrow is being triggered by the unaffordability of the prior loan. Similarly, covered longer-term balloon-payment loans, by definition, require a large portion of the loan to be paid at one time. As discussed below in Market Concerns—Longer-Term Loans, the Bureau's research suggests that the fact that a consumer seeks to take out another covered longer-term balloon-payment loan shortly after having a previous covered longer-term balloon-payment loan outstanding will frequently indicate that the consumer did not have the ability to repay the prior loan and meet the consumer's other major financial obligations and basic living expenses. The Bureau found that the approach of the balloon payment coming due is associated with significant reborrowing.[571] However, the need to reborrow caused by an unaffordable covered longer-term balloon is not necessarily limited to taking out a new loan of the same type. If the borrower takes out a new covered short-term loan in such circumstances, it also is a reborrowing. Accordingly, in order to prevent the unfair and abusive practice identified in proposed § 1041.4, the Bureau proposes a presumption of unaffordability for a covered short-term loan that would be concurrent with or shortly following a covered longer-term balloon-payment loan.

Unlike the presumption in § 1041.6(b), the Bureau does not propose an exception to the presumption based on the amount to be repaid on each loan. The rationale for that exception relies on the consumer repaying the new covered short-term loan over a period of time that is at least as long as the time that the consumer repaid the prior covered short-term loan. By definition, a covered longer-term balloon-payment loan has a longer duration than a covered short-term loan, so the circumstances for which the Bureau believes an exception is appropriate in § 1041.6(b)(2) would not be applicable to the transactions governed by proposed § 1041.6(c).

The Bureau solicits comment on the appropriateness of the proposed presumption to prevent the unfair and abusive practice and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. The Bureau also solicits comment on whether proposed § 1041.6(c) and the provisions of proposed § 1041.6 more generally would adequately protect against the potential for lenders to make covered loans of different lengths (*e.g.*, a covered short-term loan immediately followed by a 46-day covered longer-term balloon-payment loan) in order to avoid operation of the presumptions and prohibitions in proposed § 1041.6, and whether the Bureau should impose any additional lending restrictions to address this concern. Relatedly, the Bureau seeks comment on whether to impose a tolling requirement similar to that under proposed § 1041.6(h) that would apply where the lender or its affiliate are making, in close proximity, covered short-term loans and covered longer-term balloon-payment loans with a duration of 90 days or fewer. Further, the Bureau requests comment on whether additional provisions or commentary examples should be added to proposed § 1041.19, which would prohibit lender actions taken with the intent of evading the proposed rule, to address such concerns.

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[571] *CFPB Report on Supplemental Findings,* at ch. 1. The findings in the CFPB Report on Supplemental Findings refer to both "refinancing" and "reborrowing." Consistent with the Bureau's approach to defining reborrowing for the purposes of this proposal, both refinancing and reborrowing, as reported in the CFPB Report on Supplemental Findings, are considered reborrowing.

6(d) Presumption of Unaffordability for a Covered Short-Term Loan During an Unaffordable Outstanding Loan

While the Bureau's research suggests that reborrowing harms are most acute when consumers take out a series of covered short-term loans or covered longer-term balloon-payment loans, the Bureau also has concerns about other reborrowing scenarios. In particular, no matter the loan types involved, the Bureau is concerned about the potential for abuse when a lender or its affiliate offers to make a new loan to an existing customer in circumstances that suggest that the consumer may lack the ability to repay an outstanding loan. The Bureau believes that in addition to the robust residual income analysis that would be required by proposed § 1041.5, applying a presumption may be appropriate in order to specify in more detail how lenders should evaluate whether such consumers have the ability to repay a new loan in certain situations.

Accordingly, the Bureau is proposing to apply a presumption of unaffordability when a lender or its affiliate seeks to make a covered short-term loan to an existing consumer in which there are indicia that the consumer cannot afford an outstanding loan with that same lender or its affiliate. If the outstanding loan does not trigger the presumption of unaffordability in proposed § 1041.6(b) or (c) and is not subject to the prohibitions in § 1041.6(f) or (g), the presumption in proposed § 1041.6(d) would apply to a new covered short-term loan if, at the time of the lender's determination under § 1041.5, one or more of the indicia of unaffordability are present.

The triggering conditions would include a delinquency of more than seven days within the preceding 30 days, expressions by the consumer within the preceding 30 days that he or she cannot afford the outstanding loan, certain circumstances indicating that the new loan is motivated by a desire to skip one or more payments on the outstanding loan, and certain circumstances indicating that the new loan is solely to obtain cash to cover upcoming payment or payments on the outstanding loan.

Unlike the presumptions applicable to covered longer-term loans in proposed § 1041.10(c), proposed § 1041.6(d) would not provide an exception to the presumption for cases in which the new loan would result in substantially smaller payments or would substantially lower the total cost of credit for the consumer relative to the outstanding loan. This distinction reflects the Bureau's concerns discussed in Market Concerns—Short-Term Loans about the unique risk of consumer injury posed by covered short-term loans because of the requirement that a covered short-term loan be repaid shortly after consummation.

The proposed regulatory text and commentary are very similar for § 1041.6(d) and for § 1041.10(c)(1): The main difference is that proposed § 1041.6(d) would apply where the new loan would be a covered short-term loan, whereas proposed § 1041.10(c)(1) would apply where the new loan would be a covered longer-term loan. A detailed explanation of each element of the presumption and of related commentary is provided below in the section-by-section analysis of proposed § 1041.10(c)(1); because of the similarity between the sections, the discussion is not repeated in this section-by-section analysis.

The Bureau believes that the analysis required by proposed § 1041.6(d) may provide greater protection to consumers and certainty to lenders than simply requiring that such transactions be analyzed under proposed § 1041.5 alone. Proposed § 1041.5 would require generally that the lender make a reasonable determination that the consumer will have the ability to repay the contemplated covered short-term loan, taking into account existing major financial obligations that would include the outstanding loan from the same lender or its affiliate. However, the presumption in proposed § 1041.6(d) would provide a more detailed roadmap as to when a new covered short-term loan would not meet the reasonable determination test.

The Bureau solicits comment on the appropriateness of the proposed presumption to prevent the unfair and abusive practice, on each of the particular circumstances indicating unaffordability as proposed in § 1041.6(d)(1) through (4), and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. The Bureau also solicits comment on whether the specified conditions sufficiently capture circumstances in which consumers indicate distress in repaying an outstanding loan and on whether there are additional circumstances in which it may be appropriate to trigger the presumption of unaffordability. In particular, the Bureau solicits comment on whether to include a specific presumption of unaffordability in the event that the lender or its affiliate has recently contacted the consumer for collections purposes, received a returned check or payment attempt, or has an indication that the consumer's account lacks funds prior to making an attempt to collect payment. The Bureau also solicits comment on the timing elements of the proposed indications of unaffordability, such as whether to trigger the presumption after seven days of delinquency and whether to consider the prior 30 days, and on whether alternative timing conditions, such as considering the consumer's performance over the prior 60 days, would better prevent consumer harm. In addition, the Bureau solicits comment on whether the presumption should be modified in particular ways with regard to covered short-term loans that would not be appropriate for covered longer-term loans.

6(e) Overcoming the Presumption of Unaffordability

Proposed § 1041.6(e) would set forth the elements required for a lender to overcome the presumptions of unaffordability in proposed § 1041.6(b), (c), or (d). Proposed § 1041.6(e) would provide that a lender can overcome the presumption of unaffordability only if the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. Proposed § 1041.6(e) would require lenders to assess sufficient improvement in financial capacity by comparing the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.5(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

The Bureau proposes several comments to clarify the requirements for a lender to overcome a presumption of unaffordability. Proposed comment 6(e)-1 clarifies that proposed § 1041.6(e) would permit the lender to overcome the presumption in limited circumstances evidencing a sufficient improvement in the consumer's financial capacity for the new loan relative to the prior loan or, in some circumstances, during the prior 30 days. Proposed comments 6(e)-2 and -3 provide illustrative examples of these circumstances. Proposed comment 6(e)-2 clarifies that a lender may overcome a presumption of unaffordability where there is reliable evidence that the need to reborrow is prompted by a decline in income since obtaining the prior loan (or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination) that is not reasonably expected to recur for the period during which the lender is underwriting the new covered short-term loan. Proposed comment 6(e)-3 clarifies that a lender may overcome a presumption of unaffordability where there is reliable evidence that the consumer's financial capacity has sufficiently improved since the prior loan (or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination) because of an increase in net income or a decrease in major financial obligations for the period during which the lender is underwriting the new covered short-term loan. Proposed comment 6(e)-4 clarifies that reliable evidence consists of verification evidence regarding the consumer's net income and major financial obligations sufficient to make the comparison required under § 1041.6(e). Proposed comment 6(e)-4 further clarifies that a self-certification by the consumer does not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

With respect to comment 6(e)-2, the Bureau believes that if the reborrowing is prompted by a decline in income since obtaining the prior loan (or during the prior 30 days, as applicable) that is not reasonably expected to recur during the period for which the lender is underwriting the new covered short-term loan, the unaffordability of the prior loan, including difficulty repaying an outstanding loan, may not be probative as to the consumer's ability to repay a new covered short-term loan. Similarly, with respect to comment 6(e)-3, the Bureau believes that permitting a lender to overcome the presumption of unaffordability in these circumstances would be appropriate because an increase in the consumer's expected net income or decrease in the consumer's expected payments on major financial obligations since obtaining the prior loan may materially impact the consumer's financial capacity such that a prior unaffordable loan, including difficulty repaying an outstanding loan, may not be probative as to the consumer's ability to repay a new covered short-term loan. The Bureau notes, however, that if, with respect to any given lender, a substantial percentage of consumers who obtain a loan pursuant to proposed § 1041.5 return for a new loan during the reborrowing period, that pattern may provide persuasive evidence that the lender's determinations to make initial loans were not consistent with the ability-to-repay determinations under proposed § 1041.5. As discussed above, the presumptions in proposed § 1041.6 supplement the basic ability-to-repay requirements in proposed § 1041.5 in certain circumstances where a consumer's recent borrowing indicates that a consumer would not have the ability to repay a new covered short-term loan. Accordingly, the procedure in proposed § 1041.6(e) for overcoming the presumption of unaffordability would address only the presumption; lenders would still need to determine ability to repay in accordance with proposed § 1041.5 before making the new covered short-term loan.

Under proposed § 1041.6(e), the same requirement would apply with respect to both the second and third covered short-term loan in a sequence subject to the presumption in proposed § 1041.6(b). However, the Bureau expects that if, with respect to any given lender, a substantial percentage of consumers who obtain a second loan in a sequence return for a third loan, that pattern may provide persuasive evidence that the lender's determinations to make second loans notwithstanding the presumption were not consistent with proposed § 1041.6(e) and the ability-to-repay determinations were not reasonable under proposed § 1041.5. The Bureau further expects that even when a lender determines that the presumption of unaffordability can be overcome pursuant to proposed § 1041.6(e) for the second loan in a sequence, it will be a relatively unusual case in which the consumer will encounter multiple rounds of unexpected income or major financial obligation disruptions such that the lender will be able to reasonably determine that the consumer will have the ability to repay a third covered short-term loan notwithstanding the consumer's need to reborrow after each of the prior loans.

The Bureau recognizes that the standard in proposed § 1041.6(e) would permit a lender to overcome a presumption of unaffordability only in a narrow set of circumstances that are reflected in certain aspects of a consumer's financial capacity and can be verified through reliable evidence. As discussed above with regard to alternatives considered for proposed § 1041.6, the Bureau considered including an additional set of circumstances permitting lenders to overcome the presumptions of unaffordability in the event that the lender determined that the need to reborrow was prompted by an unusual and non-recurring expense rather than by the unaffordability of the prior loan. In light of the challenges with such an approach, described above, the Bureau elected instead to propose § 1041.6(e) without permitting an unusual and non-recurring expense to satisfy the conditions of the test. However, the Bureau solicits comment on including an unusual and non-recurring expense as a third circumstance in which lenders could overcome the presumptions of unaffordability.

The Bureau solicits comment on all aspects of the proposed standard for overcoming the presumptions of unaffordability. In particular, the Bureau solicits comment on the circumstances that would permit a lender to overcome a presumption of unaffordability; on whether other or additional circumstances should be included in the standard; and, if so, how to define such circumstances. In addition, the Bureau solicits comment on the appropriate time period for comparison of the consumer's financial capacity between the prior and prospective loans, including, specifically, the different requirements for prior loans of different types. The Bureau solicits comment on the types of information that lenders would be permitted to use as reliable evidence to make the determination in proposed § 1041.6(e).

The Bureau also solicits comment on any alternatives that would adequately prevent consumer injury while reducing the burden on lenders, including any additional circumstances that should be deemed sufficient to overcome a presumption of unaffordability. The Bureau also solicits comment on how to address unexpected and non-recurring increases in expenses, such as major vehicle repairs or emergency appliance replacements, including on the alternative discussed above with regard to alternatives considered for proposed § 1041.6.

6(f) Prohibition on Loan Sequences of More Than Three Covered Short-Term Loans Made Under § 1041.5

Proposed § 1041.6(f) would prohibit lenders from making a covered short-term loan under proposed § 1041.5 to a consumer during the time period in which the consumer has a covered short-term loan made under proposed § 1041.5 outstanding and for 30 days thereafter if the new covered short-term loan would be the fourth loan in a sequence of covered short-term loans made under proposed § 1041.5.[572] Proposed comment 6(f)-1 clarifies that the prohibition in proposed § 1041.6(f) does not limit a lender's ability to make a covered longer-term loan under proposed § 1041.9, § 1041.11, or § 1041.12.

As discussed above, the ability-to-repay determination required by proposed § 1041.5 is intended to protect consumers from what the Bureau believes may be the unfair and abusive practice of making a covered short-term loan without making a reasonable determination of the consumer's ability to repay the loan. If a consumer who obtains such a loan seeks a second loan when, or shortly after, the payment on the first loan is due, that suggests that the prior loan payments were not affordable and triggered the new loan application, and that a new covered short-term loan will lead to the same result. The Bureau believes that if a consumer has obtained three covered short-term loans in quick succession and seeks to obtain yet another covered short-term loan when or shortly after payment on the last loan is due, the fourth loan will almost surely be unaffordable for the consumer.

The Bureau's research underscores the risk that consumers who reach the fourth loan in a sequence of covered short-term loans will wind up in a long cycle of debt. Most significantly, the Bureau found that 66 percent of loan sequences that reach a fourth loan end up having at least seven loans, and 47 percent of loan sequences that reach a fourth loan end up having at least 10 loans.[573] For consumers paid weekly, bi-weekly, or semimonthly, 12 percent of loan sequences that reach a fourth loan end up having at least 20 loans during a 10-month period.[574] And for loans taken out by consumers who are paid monthly, more than 40 percent of all loans to these borrowers were in sequences that, once begun, persisted for the rest of the year for which data were available.[575]

Further, the opportunity to overcome the presumption for the second and third loan in a sequence means that by the time that the mandatory cooling-off period in proposed § 1041.6(f) would apply, three prior ability-to-repay determinations will have proven inconsistent with the consumer's actual experience, including two determinations that the consumer had overcome the presumption of unaffordability. If the consumer continues reborrowing during the term of or shortly after repayment of each loan, the pattern suggests that the consumer's financial circumstances do not lend themselves to reliable determinations of ability to repay a covered short-term loan. After three loans in a sequence, the Bureau believes it would be all but impossible under the proposed framework for a lender to accurately determine that a fourth covered short-term loan in a sequence would be affordable for the consumer. The Bureau believes this is particularly the case because the presumption of unaffordability under proposed § 1041.6(b) would escalate the scrutiny for each subsequent loan in a three-loan sequence. The consumer keeps returning to reborrow in spite of a lender or lenders having determined on two prior occasions that the consumer's financial capacity had sufficiently improved to overcome the presumption of unaffordability, further evidencing a pattern of reborrowing that could spiral into a debt cycle.

In light of the data described above, the Bureau believes that by the time a consumer reaches the fourth loan in a sequence of covered short-term loans, the likelihood of the consumer returning for additional covered short-term loans within a short period of time warrants additional measures to mitigate the risk that the lender is not furthering a cycle of debt on unaffordable covered short-term loans. To prevent the unfair and abusive practice identified in proposed § 1041.4, the Bureau believes that it may be appropriate to impose a mandatory cooling-off period for 30 days following the third covered short-term loan in a sequence. Accordingly, proposed § 1041.6(f) would prohibit lenders from making a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter if the new covered short-term loan would be the fourth loan in a sequence of covered short-term loans made under § 1041.5.

The Bureau believes that given the requirements set forth in proposed § 1041.5 to determine ability to repay before making an initial covered short-term loan (other than a loan made under the conditional exemption in proposed § 1041.7), and given the further requirements set forth in proposed § 1041.6(b) with respect to additional covered short-term loans in a sequence, few consumers will actually reach the point where they have obtained three covered short-term loans in a sequence and even fewer will reach that point and still need to reborrow. Such a three-loan sequence can occur only if the consumer turned out to not be able to afford a first loan, despite a lender's determination of ability to repay, and that the same occurred for the second and third loans as well, despite a second and third determination of ability to repay, including a determination that the presumption of unaffordability for the second loan and then the third loan could be overcome. However, to provide a backstop in the event that the consumer does obtain three covered short-term loans made under § 1041.5 within a short period of time proposed § 1041.6(f) would impose a prohibition on continued lending to protect consumers from further unaffordable loans. For consumers who reach that point, the Bureau believes that terminating a loan sequence after three loans may enable the consumer to escape from the cycle of indebtedness. At the same time, if any such consumers needed to continue to borrow, they could obtain a covered longer-term loan, provided that a lender reasonably determined that such a loan was within the consumer's ability to repay, pursuant to §§ 1041.9 and 1041.10, or a covered longer-term loan under either of the conditional exemptions in proposed §§ 1041.11 and 1041.12.

During the SBREFA process, the Bureau received substantial feedback about the proposal under consideration to impose a conclusive presumption of unaffordability following the third covered short-term loan in a sequence.

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[572] Proposed § 1041.6(f) provides that it applies notwithstanding the presumption of unaffordability under proposed § 1041.6(b). If a covered short-term loan would be the fourth covered short-term loan in a sequence, then the prohibition in proposed § 1041.6(f) would apply, rather than the presumption under proposed § 1041.6(b).

[573] Results calculated using data described in Chapter 5 of the CFPB Report on Supplemental Findings.

[574] Results calculated using data described in Chapter 5 of the CFPB Report on Supplemental Findings.

[575] *CFPB Report on Supplemental Findings*, at 32.

Most notably, many SERs provided feedback to the Bureau indicating that they rely heavily on consumers who regularly take out a chain of short-term loans and that the limit of three loans would cause a significant decrease in revenue and profit for their businesses. A study submitted by several of the SERs provides evidence to substantiate their claim. Similarly, as discussed further at Market Concerns—Short-Term Loans, the Bureau's examination of data obtained from larger lenders likewise indicates that a large percentage of the loan volume of payday lenders comes from consumers trapped in prolonged loan sequences.[576]

As explained with regard to proposed § 1041.6(b)(1) above, the Bureau believes that, even without the mandatory cooling-off period under proposed § 1041.6(f), there would be relatively few instances in which lenders could reasonably determine that a consumer had the ability to repay successive loans in a sequence. As discussed in part VI, the Bureau believes that the primary impact on loan volume and lender revenue from the ability-to-repay requirements would be the decline in initial covered short-term loans made under the ability-to-repay requirements. Moreover, the fact that the proposal would have such a disruptive impact on these lenders' current source of revenue does not, in the Bureau's view, detract from the appropriateness of these provisions to prevent the unfair and abusive practice that the Bureau has preliminarily identified. Indeed, the Bureau believes that the lenders' concern about the revenue impact of limiting extended cycles of reborrowing confirms the Bureau's reasons for believing that these provisions may be appropriate to prevent the unfair and abusive practice. The proposed cooling-off period would last 30 days for the same reason that the Bureau is using that time frame to draw the line as to when a new loan is likely the result of the unaffordability of the prior loan.

The Small Business Review Panel Report recommended that the Bureau request comment on whether permitting a sequence of more than three covered short-term loans would enable the Bureau to fulfill its stated objectives for the rulemaking while reducing the revenue impact on small entities. Conversely, during the SBREFA process and associated outreach following publication of the Small Business Review Panel Report, other stakeholders suggested that the mandatory cooling-off period should apply in additional circumstances, such as based on a pattern of sustained usage of covered short-term loans or covered longer-term balloon-payment loans over a period of time, even if the usage pattern did not involve three-loan sequences.

The Bureau solicits comment on the necessity of the proposed prohibition and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. In particular, the Bureau solicits comment on whether a presumption of unaffordability rather than a mandatory cooling-off period would be sufficient to prevent the targeted harms and, if so, whether such presumptions should be structured to match proposed § 1041.6(b) and (e), or should be tailored in some other way. Additionally, consistent with the Small Business Review Panel Report, the Bureau solicits comment on whether three loans is the appropriate threshold for the prohibition or whether permitting lenders to overcome the presumption of unaffordability for a greater number of loans before the mandatory cooling-off period would provide the intended consumer protection while mitigating the burden on lenders. The Bureau also solicits comment on whether the mandatory cooling-off period should extend for a period greater than 30 days or should apply in any other circumstances, such as based on the total number of covered short-term loans a consumer has obtained during a specified period of time or the number of days the consumer has been in debt during a specified period of time. Additionally, the Bureau solicits comment on whether there is a pattern of reborrowing on a mix of covered short-term loans and covered longer-term balloon-payment loans for which a mandatory cooling-off period would be appropriate and, if so, what refinements to the prohibition in proposed § 1041.6(f) would be appropriate for such an approach.

6(g) Prohibition on Making a Covered Short-Term Loan Under § 1041.5 Following a Covered Short-Term Loan Made Under § 1041.7

Proposed § 1041.6(g) would prohibit a lender from making a covered short-term loan under proposed § 1041.5 during the time period in which the consumer has a covered short-term loan made under proposed § 1041.7 outstanding and for 30 days thereafter. The proposed prohibition corresponds to the condition in proposed § 1041.7(c)(2) that would prohibit making a covered short-term loan under proposed § 1041.7 during the time period in which the consumer has a covered short-term loan made under proposed § 1041.5 (or a covered longer-term balloon-payment loan made under proposed § 1041.9) outstanding and for 30 days thereafter. The Bureau is including this provision in proposed § 1041.6 for ease of reference for lenders so that they can look to a single provision of the rule for a list of prohibitions and presumptions that affect the making of covered short-term loans under proposed § 1041.5, but discusses the underlying rationale in additional detail in the section-by-section analysis for proposed § 1041.7(c)(2) below.

Proposed § 1041.7 sets forth numerous protective conditions for a covered short-term loan conditionally exempt from the ability-to-repay requirements of proposed §§ 1041.5 and 1041.6; these conditions are discussed in depth in connection with that section. As a parallel provision to proposed § 1041.7(c)(2), the Bureau proposes the prohibition in proposed § 1041.6(g) in order to prevent undermining the protections of proposed § 1041.7, most significantly, the principal reduction requirements of proposed § 1041.7(b)(1). As discussed with regard to that provision, the Bureau believes that the principal reduction requirements of proposed § 1041.7(b)(3) are an essential component of the proposed conditional exemption. Additionally, as discussed in the section-by-section analysis of proposed § 1041.7(c)(2), the Bureau believes that providing separate "paths" for making covered short-term loans under proposed § 1041.5 and proposed § 1041.7 would facilitate a more consistent framework for regulation in this market and make the rule simpler for both consumers and lenders.

The Bureau solicits comment on the necessity of the proposed prohibition and on any alternatives that would achieve the Bureau's objectives here while reducing the burden on lenders.

6(h) Determining Period Between Consecutive Covered Loans

Proposed § 1041.6(h) would define how a lender must determine the number of days between covered loans for the purposes of proposed § 1041.6(b), (c), (f), and (g). In particular, proposed § 1041.6(h) would specify that days on which a consumer had a non-covered bridge loan outstanding do not count toward the determination of time periods specified by proposed § 1041.6(b), (c), (f), and (g). Proposed comment 6(h)-1 clarifies that § 1041.6(h) would apply if the lender or its affiliate makes a non-covered bridge loan to a consumer during the time period in which any covered short-term loan or covered longer-term balloon-payment loan made by a lender or its affiliate is outstanding and for 30 days thereafter. Proposed comment 6(h)-2 provides an example.

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[576] *CFPB Report on Supplemental Findings*, at ch. 5.

As discussed in more detail in the section-by-section of proposed § 1041.2(a)(13), defining non-covered bridge loan, the Bureau is concerned that there is some risk that lenders might seek to evade the proposed rule designed to prevent unfair and abusive practices by making certain types of loans that fall outside the scope of the proposed rule during the 30-day period following repayment of a covered short-term loan or covered longer-term balloon-payment loan. Since the due date of such a loan would be beyond that 30-day period, the lender would be free to make another covered short-term loan subsequent to the non-covered bridge loan without having to comply with proposed § 1041.6. Proposed § 1041.2(a)(13) would define non-covered bridge loan as a non-recourse pawn loan made within 30 days of an outstanding covered short-term loan and that the consumer is required to repay within 90 days of its consummation. The Bureau is seeking comment under that provision as to whether additional non-covered loans should be added to the definition.

As with all of the provisions of proposed § 1041.6, in proposing § 1041.6(g) and its accompanying commentary, the Bureau is relying on its authority to prevent unfair, deceptive, and abusive acts and practices under the Dodd-Frank Act.[577] For purposes of proposed § 1041.6(g) in particular, the Bureau is also relying on its anti-evasion authority under section 1022(b)(1) of the Dodd-Frank Act. As discussed at part IV, Dodd-Frank Act section 1022(b)(1) provides that the Bureau's director may prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." [578] The Bureau believes that the requirements of proposed § 1041.6(g) would prevent evasions of the reborrowing restrictions under proposed § 1041.6 by not counting the days on which a non-covered bridge loan is outstanding toward the determination of whether a subsequent covered short-term loan made by the lender or its affiliate is part of the same loan sequence as the prior covered short-term loan, or is made within 30 days of the prior loan outstanding, as applicable. This would prevent evasion insofar as, in the absence of this proposed restriction, a lender or its affiliate could make a non-covered bridge loan to keep a consumer in debt on a non-covered bridge loan during the reborrowing period and so wait to make the new covered short-term loan more than 30 calendar days, but with fewer days without non-covered bridge loan, after the prior loan, which would evade the reborrowing restrictions in proposed § 1041.6. The Bureau is concerned that this type of circumvention of the reborrowing restrictions could lead to lenders making covered short-term loans that consumers do not have the ability to repay.

Accordingly, the Bureau proposes to exclude from the period of time between affected loans, those days on which a consumer has a non-covered bridge loan outstanding. The Bureau believes that defining the period of time between covered loans in this manner may be appropriate to prevent lenders from making covered short-term loans for which the consumer does not have the ability to repay.

The Bureau solicits comment on the appropriateness of the standard in proposed § 1041.6(h) and on any alternatives that would adequately prevent consumer harm while reducing burden on lenders.

Section 1041.7 Conditional Exemption for Certain Covered Short-Term Loans

For the reasons discussed below, the Bureau is proposing to exempt covered short-term loans under proposed § 1041.7 (also referred to herein as a Section 7 loan) from proposed §§ 1041.4, 1041.5, and 1041.6. Proposed § 1041.7 includes a number of screening and structural protections for consumers who are receiving loans not subject to the proposed ability-to-repay determination. These provisions would reduce the likelihood and magnitude of consumer harms from unaffordable payments on covered short-term loans, including addressing the common occurrence that such loans lead to sequences of reborrowing by consumers.

Background

Based on its own and outside research, the Bureau recognizes that, even without ability-to-repay assessments, some consumers repay a short-term loan when due without further reborrowing. These consumers avoid some, if not all, of the harms with which the Bureau is concerned. For example, as described in the CFPB Report on Supplemental Findings, approximately 22 percent of new payday loan sequences do not result in any reborrowing within the ensuing 30 days.[579] While the Bureau believes that most of these consumers would be able to demonstrate their ability to repay and thus continue to obtain loans under the Bureau's proposal, the Bureau recognizes that there may be a sub-segment of consumers for whom this is not true and who would be denied loans even though they could, in fact, afford the payment. These consumers, for example, may be paid, in whole or in part, in cash and may not deposit their wages into a transaction account, preventing verification of their income.

Some of these consumers may take out a payday loan, repay it on the contractual due date, and never again use a payday loan. Others may return on another occasion, when a new need arises, likely for another short sequence.[580] Further, even among those who do reborrow, the Bureau's research indicates that about 16 percent of payday sequences ended with repayment within three loans, without either reborrowing within 30 days after the last payment or defaulting.[581]

In addition, the Bureau's research suggests that even consumers who reborrow many times might have shorter loan sequences if they were offered the option of taking out smaller loans each time they returned to reborrow—instead of being presented only with the option of rolling over the loan (in States where it is permitted) or repaying the full amount of the loan plus the finance charge, which often leads to taking out another loan in the same amount.[582]

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[577] 12 U.S.C. 5531(b).

[578] 12 U.S.C. 5512(b)(1).

[579] *CFPB Report on Supplemental Findings.* The Bureau's finding may overstate the extent to which payday borrowers are able to avoid re-borrowing since the Bureau's study looks at borrowing from a single lender. A recent study which tracks borrowers across five large lenders who together make up 20 percent of the storefront payday market finds that 21 percent of borrowers switch lenders and that of those roughly two-thirds did so within 14 days of paying off a prior loan. *See* Clarity Services, Finding the Silver Lining in Regulatory Storm Clouds: Consumer Behavior and Borrowing Capacity in the New Payday Market at 4, 9 (2015) [hereinafter *Finding the Silver Lining in Regulatory Storm Clouds: Consumer Behavior and Borrowing Capacity in the New Payday Market*], *available at https://www.nonprime101.com/wp-content/uploads/2015/10/FISCA-10-15.pdf.*

[580] The study described in the previous footnote, using data over a four-year time frame, found that 16 percent of borrowers took out one payday loan, repaid it on the contractual due date, and did not return again during the period reviewed; that the median borrower had 2 sequences over four years; and that the average borrower had 3.37 sequences. (This study defined sequence, as did the Bureau's 2014 Data Point, by using a 14-day time period.) *Finding the Silver Lining in Regulatory Storm Clouds: Consumer Behavior and Borrowing Capacity in the New Payday Market,* at 8, 14.

[581] *CFPB Report on Supplemental Findings,* at 125.

Finally, the Bureau recognizes that the verification and ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 would impose compliance costs that some lenders, especially smaller lenders, may find difficult to absorb for covered short-term loans, particularly those relatively small in amount.

In light of these considerations, the Bureau believes that it would further the purposes and objectives of the Dodd-Frank Act, to provide a simpler alternative to the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 for covered short-term loans, but with robust alternative protections against the harms from loans with unaffordable payments. As described in more detail below, proposed § 1041.7 would permit lenders to extend consumers a sequence of up to three loans, in which the principal is reduced by one-third at each stage and certain other conditions are met, without following the ability-to-repay requirements specified in proposed §§ 1041.5 and 1041.6.

The Bureau recognizes that this alternative approach for covered short-term loans in proposed § 1041.7 has drawn criticism from a variety of stakeholders. During the SBREFA process and the Bureau's general outreach following the Bureau's release of the Small Business Review Panel Outline, many lenders and other industry stakeholders argued that the alternative requirements for covered short-term loans presented in the Small Business Review Panel Outline would not provide sufficient flexibility.[583] Several SERs whose companies make covered short-term loans expressed the view that, despite the reduction in burdens associated with the ability-to-repay requirements, the alternative requirements discussed in the Small Business Review Panel Outline would not provide for sufficient loan volume to sustain their profitability.[584] A group of SERs submitted a report by third party consultants that projected significant revenue loss and reductions in profitability for small lenders if they made covered short-term loans solely under the alternative approach.[585]

In contrast, consumer advocates, during the Bureau's outreach following its release of the Small Business Review Panel Outline, have argued that permitting covered short-term loans to be made without an ability-to-repay determination would weaken the overall rule framework. A letter signed by several hundred national and State consumer advocates urged the Bureau, before the release of the Small Business Review Panel Outline, not to create any alternatives to the ability-to-repay requirement that would sanction a series of repeat loans.[586]

The Bureau has carefully considered this feedback in developing the proposed rule. With regard to the industry argument that the proposal considered in the Small Business Review Panel Outline would not allow for lenders to remain profitable, the Bureau believes that this concern is the product of many lenders' reliance on long sequences of covered short-term loans to consumers. Since the Bureau began studying the market for payday, vehicle title, and similar loans several years ago, the Bureau has noted its significant concern with the amount of long-term reborrowing observed in the market and on the apparent dependence of many lenders on such reborrowing for a significant portion of their revenues.[587] Proposed § 1041.7 would permit consumers with emergencies or occasional financial shortfalls to receive a limited number of covered short-term loans without the protection of an ability-to-repay determination under proposed §§ 1041.5 and 1041.6. For this very reason, proposed § 1041.7 would provide these consumers with an alternative set of protective requirements.

The Bureau notes that, as discussed in Market Concerns—Short-Term Loans, covered short-term loans are frequently marketed to consumers as loans that are intended for short-term, infrequent use. The dependency of many lenders on long-term reborrowing is in tension with this marketing and exploits consumers' behavioral biases.[588] The Bureau is sensitive to the impacts that the proposed rule would have on small entities. To the extent small lenders are relying on repeated reborrowing and long loan sequences, however, the Bureau has the same concerns it has expressed more generally with this market.

In proposing § 1041.7, the Bureau does not mean to suggest that lenders would generally be able to maintain their current business model by making loans permitted by proposed § 1041.7. To the contrary, the Bureau acknowledges that a substantial fraction of loans currently made would not qualify for the exemption under proposed § 1041.7 because they are a part of extended cycles of reborrowing that are very harmful to consumers. Some lenders may be able to capture scale economies and build a business model that relies solely on making loans under proposed § 1041.7. For other lenders, the Bureau expects that loans made under proposed § 1041.7 would become one element of a business model that would also incorporate covered short-term and covered longer-term loans made using an ability-to-repay determination under proposed §§ 1041.5 and 1041.6 and §§ 1041.9 and 1041.10, respectively.

With respect to the argument from consumer advocates, the Bureau does not believe that providing a carefully constructed alternative to the proposed ability-to-repay requirements in §§ 1041.5 and 1041.6 would undermine the consumer protections in this proposed rulemaking. As discussed above, the exemption would provide a simpler means of obtaining a covered short-term loan for consumers for whom the loan is less likely to prove harmful. Moreover, the Bureau has built into proposed § 1041.7 a number of safeguards, including the principal stepdown requirements and the limit on the number of loans in a sequence of Section 7 loans, to ensure that consumers cannot become trapped in long-term debt on an ostensibly short-term loan and to reduce the risk of harms from reborrowing, default, and collateral harms from making unaffordable loan payments during a short sequence of Section 7 loans. The proposal reflects the Bureau's belief that the requirements in proposed § 1041.7 would appropriately balance the interest of providing strong consumer protections with the aim of permitting access to less risky credit.

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[582] *Id.* at 133.

[583] During and after the SBREFA process, the Bureau was considering two options, one of which would have allowed three-loan sequences with a subsequent off-ramp stage for consumers who had not been able to repay the principal, and one that would have required principal step-downs similar to the approach the Bureau is now proposing. SERs and other industry stakeholders criticized both approaches because they would have limited lending to three-loan sequences and imposed limits on how many alternative loans could be taken out per year.

[584] *See* Small Business Panel Report, at 22.

[585] *See id.* ("Five of the SERs submitted to the Panel the findings of a report commissioned by a trade association representing six of the SERs. Examining store-level data from these small businesses that make payday loans, the report found that the alternative requirements for covered short-term loans would cause lender revenues to decline by 82 percent. The report found that five of the six lenders considered would become unprofitable and that the sixth lender would experience a 70-percent decline in profitability.").

[586] Letter from Americans for Financial Reform, to Richard Cordray, Director, Consumer Fin. Protection Bureau (Oct. 23, 2014), *available at http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/payday_letter_director_cordray_cfpb_102314.pdf.*

[587] *See* Market Concerns—Short-Term Loans. *See also, e.g.,* Richard Cordray, Director, Consumer Fin. Protection Bureau, Prepared Remarks of CFPB Director Richard Cordray at the Field Hearing on Payday Lending, Mar. 26, 2015, Richmond, Virginia), *available at http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-field-hearing-on-payday-lending/.*

[588] *See* Market Concerns—Short-Term Loans.

By including an alternative set of requirements under proposed § 1041.7, the Bureau is not suggesting that regulation of covered short-term loans at the State, local, or tribal level should encompass only the provisions of proposed § 1041.7. Proposed § 1041.7(a) would not provide an exemption from any other provision of law. Many States and other non-Federal jurisdictions have made and likely will continue to make legislative and regulatory judgments to impose usury limits, prohibitions on making high cost covered short-term loans altogether, and other strong consumer protections under legal authorities that in some cases extend beyond those of the Bureau. The proposed regulation would coexist with—rather than supplant—State, local, and tribal regulations that impose a stronger protective framework. Proposed § 1041.7 would also not permit loans to servicemembers and their dependents that would violate the Military Lending Act and its implementing regulations. (*See* discussion in part IV.)

The Bureau seeks comment generally on whether to provide an alternative to the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6 for covered short-term loans that satisfy certain requirements. The Bureau also seeks comment on whether proposed § 1041.7 would appropriately balance the considerations discussed above regarding consumer protection and access to credit that presents a lower risk of harm to consumers. The Bureau, further, seeks comment on whether covered short-term loans could be made in compliance with proposed § 1041.7 in States and other jurisdictions that permit covered short-term loans. The Bureau also seeks comment generally on the costs and other burdens that would be imposed on lenders, including small entities, by proposed § 1041.7.

Legal Authority

Proposed § 1041.7 would establish an alternative set of requirements for covered short-term loans that, if complied with by lenders, would conditionally exempt them from the unfair and abusive practice identified in proposed § 1041.4 and the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6.[589] The Bureau is proposing the requirements of proposed § 1041.7 pursuant to the Bureau's authority under Dodd-Frank Act section 1022(b)(3)(A) to grant conditional exemptions in certain circumstances from rules issued by the Bureau under the Bureau's Dodd-Frank Act legal authorities. With respect to proposed § 1041.7(e), the Bureau is relying on the Bureau's authority under sections 1032(a) of the Dodd-Frank Act, which allows the Bureau to prescribe rules to ensure that the features of a consumer financial product or service are fully, accurately, and effectively disclosed to consumers, and section 1032(b) of the Dodd-Frank Act, which provides for the use of model forms.

Section 1022(b)(3)(A) of the Dodd-Frank Act—Exemption Authority

Dodd-Frank Act section 1022(b)(3)(A) authorizes the Bureau to, by rule, "conditionally or unconditionally exempt any class of . . . consumer financial products or services" from any provision of Title X of the Dodd-Frank Act or from any rule issued under Title X as the Bureau determines "necessary or appropriate to carry out the purposes and objectives" of Title X. The purposes of Title X are set forth in Dodd-Frank Act section 1021(a),[590] which provides that the Bureau shall implement and, where applicable, enforce Federal consumer financial law consistently "for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that [such markets] are fair, transparent and competitive."

The objectives of Title X are set forth in Dodd-Frank Act section 1021(b).[591] Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services: (1) Consumers "are provided with timely and understandable information to make responsible decisions about financial transactions" (*see* Dodd-Frank Act section 1021(b)(1)[592]); (2) consumers "are protected from unfair, deceptive, or abusive acts and practices and from discrimination" (*see* Dodd-Frank Act section 1021(b)(2)[593]); (3) "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens" (*see* Dodd-Frank Act section 1021(b)(3)[594]); (4) "Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair completion" (*see* Dodd-Frank Act section 1021(b)(4)[595]); and "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation" (*see* Dodd-Frank Act section 1021(b)(5)[596]).

When issuing an exemption under Dodd-Frank Act section 1022(b)(3)(A), the Bureau is required under Dodd-Frank Act section 1022(b)(3)(B) to take into consideration, as appropriate, three factors. These enumerated factors are: (1) The total assets of the class of covered persons;[597] (2) the volume of transactions involving consumer financial products or services in which the class of covered persons engages;[598] and (3) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[599]

The Bureau believes that the proposed conditional exemption for covered short-term loans is appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act, for three primary reasons. First, proposed § 1041.7 is consistent with both the Bureau's statutory purpose under Dodd-Frank Act section 1021(a) of seeking to implement consumer financial law consistently to ensure consumers' access to fair, transparent, and competitive markets for consumer financial products and services and the Bureau's related statutory objective under Dodd-Frank Act section 1021(b)(5) of ensuring that such markets operate transparently and efficiently to facilitate access with respect to consumer financial products and services. As described in more detail in the section-by-section analysis below, proposed § 1041.7 would help to preserve access to credit by providing lenders an option for making covered short-term loans that is an alternative to—and a conditional exemption from—

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[589] As described in the section-by-section analysis of proposed §§ 1041.4 through 1041.6, the Bureau is proposing those provisions pursuant to the Bureau's separate authority under Dodd-Frank Act section 1031(b) to "prescribe rules identifying as unlawful unfair, deceptive or abusive acts or practices" and to include in such rules "requirements for the purpose of preventing such acts or practices."

[590] 12 U.S.C. 5511(a).

[591] 12 U.S.C. 5511(b).

[592] 12 U.S.C. 5511(b)(1).

[593] 12 U.S.C. 5511(b)(2).

[594] 12 U.S.C. 5511(b)(3).

[595] 12 U.S.C. 5511(b)(4).

[596] 12 U.S.C. 5511(b)(5).

[597] 12 U.S.C. 5512(b)(3)(B)(i).

[598] 12 U.S.C. 5512(b)(3)(B)(ii).

[599] 12 U.S.C. 5512(b)(3)(B)(iii).

the proposed ability-to-repay requirements. Because lenders making Section 7 loans would be conditionally exempt from complying with the ability-to-repay requirements under §§ 1041.5 and 1041.6, making loans under proposed § 1041.7 would reduce the compliance costs for lenders that make covered short-term loans relative to the costs of complying with the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6. This reduction in compliance costs would help facilitate access. Moreover, consumers who lack the necessary verification evidence to qualify for a covered short-term loan under the proposed ability-to-repay requirements (for example, those consumers who are paid in cash and thus cannot document income through a pay stub) would be able to receive a covered short-term loan under this option subject to the requirements set forth in proposed § 1041.7. This further advances the statutory purposes and objective related to facilitating consumers' access to credit.

Second, the proposed conditional exemption for covered short-term loans is consistent with the Bureau's statutory objective under Dodd-Frank Act section 1021(b)(2) of ensuring that consumers are protected from unfair or abusive acts and practices. The Bureau is proposing in § 1041.4 that it is an unfair and abusive practice for a lender to make a covered short-term loan without making a reasonable determination that the consumer has the ability to repay the loan. In §§ 1041.5 and 1041.6, the Bureau is proposing to prevent that unfair and abusive practice by prescribing ability-to-repay requirements for lenders making covered short-term loans. Although lenders making Section 7 loans would not be required to satisfy these ability-to-repay requirements, they would be required to satisfy the requirements for the conditional exemption under proposed § 1041.7. As described in more detail in this section-by-section analysis below, the requirements for proposed § 1041.7 are designed to protect consumers from the harms that result from lenders making short-term, small-dollar loans with unaffordable payments—namely, repeat borrowing, but also defaults and collateral harms from making unaffordable loan payments. These are the same types of harms that the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6 aim to address.

Third, the conditional exemption in proposed § 1041.7 is consistent with the Bureau's statutory objective under Dodd-Frank Act section 1021(b)(1) of ensuring that consumers are provided with timely and understandable information to make responsible decisions about financial transactions. Under proposed § 1041.7(e), the Bureau would impose a series of disclosure requirements in connection with the making of Section 7 loans. These disclosures would notify the consumer of important aspects of the operation of these transactions, and would contribute significantly to consumers receiving timely and understandable information about taking out Section 7 loans.

The Bureau, furthermore, has taken the statutory factors listed in Dodd-Frank Act section 1022(b)(3)(B) into consideration, as appropriate. The first two factors are not materially relevant because these factors pertain to exempting a class of covered persons, whereas proposed § 1041.7 would conditionally exempt a class of transactions—Section 7 loans—from certain requirements of the proposed rule. Nor is the Bureau basing the proposed conditional exemption on the third factor. Certain proposed requirements under § 1041.7 are similar to requirements under certain applicable State laws and local laws, as discussed below in the section-by-section analysis. However, the Bureau is not aware of any State or locality that has combined all of the elements that the Bureau believes are needed to adequately protect consumers from the harms associated with unaffordable payments in absence of an ability-to-repay requirement.[600]

The Bureau emphasizes that the proposed conditional exemption in proposed § 1041.7 would be a partial exemption. That is, Section 7 loans would still be subject to all of the requirements of the Bureau's proposed rule other than the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6.

The Bureau seeks comment on whether the Bureau should rely upon the Bureau's statutory exemption authority under Dodd-Frank Act section 1022(b)(3)(A) to exempt loans that satisfy the requirements of proposed § 1041.7 from the unfair and abusive practice identified in proposed § 1041.4 and from the ability-to-repay requirements proposed under §§ 1041.5 and 1041.6. Alternatively, the Bureau seeks comment on whether the requirements under proposed § 1041.7 should instead be based on the Bureau's authority under Dodd-Frank Act section 1031(b) to prescribe rules identifying as unlawful unfair, deceptive, or abusive practices and to include in such rules requirements for the purpose of preventing such acts or practices.

Dodd-Frank Act Sections 1032(a) and 1032(b)

The Bureau is proposing to require disclosures in § 1041.7(e) related to covered short-term loans made under proposed § 1041.7 pursuant to the Bureau's authority under sections 1032(a) and (b) of the Dodd-Frank Act. Section 1032(a) of the Dodd-Frank Act provides that the Bureau "may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe disclosure requirements in rules regarding particular features even if other Federal consumer financial laws do not specifically require disclosure of such features. Specifically, the Bureau is proposing to require a lender to provide notices before making the first and third loan in a sequence of Section 7 loans that would inform consumers of the risk of taking such a loan and restrictions on taking subsequent Section 7 loans in a sequence.

Under Dodd-Frank Act section 1032(b)(1), "any final rule prescribed by the Bureau under [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures." Any model form must contain a clear and conspicuous disclosure according to Dodd-Frank Act section 1032(b)(2). At a minimum, this clear and conspicuous disclosure must use plain language comprehensible to consumers, contain a clear format and design, and succinctly explain the information that must be communicated to the consumer. Dodd-Frank Act section 1032(b)(3) provides that any model form the Bureau issues pursuant to Dodd-Frank Act section 1032(b) shall be validated through consumer testing. In developing the model forms for the proposed notices, the Bureau conducted two rounds of qualitative consumer testing in September and October of 2015. The testing results are provided in the FMG Report. Dodd-Frank Act section 1032(d) provides that, "Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form."

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[600] See also the discussion in Market Concerns—Short-Term Loans regarding the prevalence of harms in the short-term loan market in spite of existing regulatory approaches.

7(a) Conditional Exemption for Certain Covered Short-Term Loans

Proposed § 1041.7(a) would establish a conditional exemption for certain covered short-term loans. Under proposed § 1041.7(a), a covered short-term loan that is made in compliance with the requirements set forth in proposed § 1041.7(b) through (e) could make a covered short-term loan would be exempt from §§ 1041.4, 1041.5, and 1041.6. Proposed § 1041.7(a), like other sections of proposed part 1041, would not pre-empt State, local, or tribal restrictions that impose further limits on covered short-term loans, or that prohibit high-cost, covered short-term loans altogether. Proposed § 1041.7(a) would require the lender, in determining whether the proposed requirements in paragraphs (b), (c), and (d) are satisfied, to obtain information about the consumer's borrowing history from the records of the lender, the records of the lender's affiliates, and a consumer report from an information system registered under proposed § 1041.17(c)(2) or proposed § 1041.17(d)(2).

Proposed comment 7(a)-1 explains that a lender could make a covered short-term loan without making the ability-to-repay determination under proposed §§ 1041.5 and 1041.6, provided it complied with the requirements set forth in proposed § 1041.7(b) through (e). Proposed comment 7(a)-2 clarifies that a lender cannot make a covered short-term loan under proposed § 1041.7 if no information system is registered under proposed § 1041.17(c)(2) or proposed § 1041.17(d)(2) and available when the lender seeks to make the loan. Proposed comment 7(a)-2 also clarifies that a lender may be unable to obtain a report on the consumer's borrowing history if, for example, information systems have been registered under proposed § 1041.17(c)(2) or proposed § 1041.17(d)(2) but are not yet operational or registered information systems are operational but all are temporarily unavailable.

The Bureau believes it is appropriate to condition the exemption in proposed § 1041.7 on the ability of a lender to obtain and review of a consumer report from a registered information system. The Bureau believes that this approach is warranted because making a covered short-term loan under proposed § 1041.7 does not require a detailed analysis of the consumer's ability to repay the loan under proposed §§ 1041.5 and 1041.6. Rather, proposed § 1041.7 protects consumers through a carefully calibrated system of requirements to ensure, among other things, that a consumer can reduce principal amounts over the course of a loan sequence. Because lenders are not required to conduct an ability-to-repay determination under proposed §§ 1041.5 and 1041.6, holistic information about the consumer's recent borrowing history with the lender, as well as other lenders, is especially important for ensuring the integrity of the requirements in proposed § 1041.7.

While the Bureau had proposed an income verification requirement in the Small Business Review Panel Outline, the proposed rule would not require a lender to verify a consumer's income before making a loan under proposed § 1041.7. Upon further consideration, the Bureau believes that an income verification requirement is not necessary in proposed § 1041.7. Because lenders would know at the outset that they would have to recoup the entire principal amount and finance charges within a loan sequence of no more than three loans, the Bureau believes that lenders would have strong incentives to verify that consumers have sufficient income to repay within that window. In addition, as discussed above, the Bureau believes that there are meaningful advantages to providing flexibility both for consumers who, in fact, have capacity to repay one or more covered short-term loans but cannot easily provide the income documentation required in proposed § 1041.5(c), and for lenders in reducing compliance costs relative to the income documentation requirement in proposed § 1041.5(c). In light of these considerations, the Bureau believes that it is appropriate to allow lenders flexibility to adapt their current income verification processes without dictating a specific approach under proposed § 1041.7.[601]

Consistent with the recommendations of the Small Business Review Panel Report, the Bureau seeks comment on the cost to small entities of obtaining information about consumer borrowing history and on potential ways to reduce the operational burden of obtaining this information. The Bureau also seeks comment on not requiring lenders to verify a consumer's income when making a covered short-term loan under § 1041.7. In particular, the Bureau seeks comment on whether lenders should be required to verify a consumer's income when making a covered short-term loan under proposed § 1041.7, and if so how to craft a standard that would offer additional protection for consumers and yet preserve the advantages of a more flexible system relative to proposed § 1041.5(c).

7(b) Loan Term Requirements

Proposed § 1041.7(b) would require a covered short-term loan that is made under proposed § 1041.7 to comply with certain requirements as to the loan terms and structure. The requirements under proposed § 1041.7(b), in conjunction with the other requirements set forth in proposed § 1041.7(c) through (e), would reduce the likelihood that consumers who take Section 7 loans would end up in extended loan sequences, default, or suffer substantial collateral harms from making unaffordable loan payments on covered short-term loans. Furthermore, these proposed requirements would limit the harm to consumers in the event they are unable to repay the initial loan as scheduled. Discussion of each of these loan term requirements is contained in the section-by-section analysis below. If the loan term requirements set forth in proposed § 1041.7(b) are not satisfied, the lender would not be able to make a loan under proposed § 1041.7.

7(b)(1)

Proposed § 1041.7(b)(1) would require a covered short-term loan made under proposed § 1041.7 to be subject to certain principal amount limitations. Specifically, proposed § 1041.7(b)(1)(i) would require that the first loan in a loan sequence of Section 7 loans have a principal amount that is no greater than $500. Proposed § 1041.7(b)(1)(ii) would require that the second loan in a loan sequence of Section 7 loans have a principal amount that is no greater than two-thirds of the principal amount of the first loan in the loan sequence. Proposed § 1041.7(b)(1)(iii) would require that the third loan in a loan sequence of Section 7 loans have a principal amount that is no greater than one-third of the principal amount of the first loan in the loan sequence.

Proposed comment 7(b)(1)-1 cross-references the definition and commentary regarding loan sequences. Proposed comment 7(b)(1)-2 clarifies that the principal amount limitations apply regardless of whether the loans are made by the same lender, an affiliate, or unaffiliated lenders. Proposed comment 7(b)(1)-3 notes that the principal amount limitations under proposed § 1041.7 apply to both rollovers of an existing loan when they are permitted under State law and new loans that are counted as part of the same loan sequence. Proposed comment 7(b)(1)-4 gives an example of a loan sequence in which the principal amount is stepped down in thirds.

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[601] As noted above and in part II.B, the Bureau believes that most lenders already have some processes in place to verify that applicants are not so lacking in income that they will default on a first loan. *See, e.g.*, Small Business Review Panel Report, at 16 (SERs' discussion of their practices).

The Bureau believes that the principal cap and principal reduction requirements under proposed § 1041.7(b)(1) are critical to reducing both the risk of extended loan sequences and the risk that the loan payments over limited shorter loan sequence would prove unaffordable for consumers. Because proposed § 1041.7 would not require an ability-to-repay determination under proposed §§ 1041.5 and 1041.6 for a covered short-term loan, some consumers may not be able to repay these loans as scheduled. Absent protections, these consumers would be in the position of having to reborrow or default on the loan or fail to meet other major financial obligations or basic living expenses as the loan comes due—that is, the same position faced by consumers in the market today. As discussed in Market Concerns—Short-Term Loans, the Bureau has found that when that occurs, consumers generally reborrow for the same amount as the prior loan, rather than pay off a portion of the loan amount on the previous loan and reduce their debt burden. As a result, consumers may face a similar situation when the next loan comes due, except that they have fallen further into debt. The Bureau has found that this lack of principal reduction, or "self-amortization," over the course of a loan sequence is correlated with higher rates of reborrowing and default.[602]

Proposed § 1041.7(b)(1) would work in tandem with proposed § 1041.7(c)(3), which would limit a loan sequence of Section 7 loans to no more than three loans. The proposed requirements together would ensure that a consumer may not receive more than three consecutive covered short-term loans under proposed § 1041.7 and that the principal would decrease from a maximum of $500 in the first loan over the course of a loan sequence. Without the principal reduction requirements, consumers could reborrow twice and face difficulty in repaying the third loan in the loan sequence, similar to the difficulty that they had faced when the first loan was due. The proposed principal reduction feature is intended to steadily reduce consumers' debt burden and permit consumers to pay off the original loan amount in more manageable increments over the course of a loan sequence with three loans.

The Bureau believes that the proposed $500 limit for the first loan is appropriate in light of current State regulatory limits and would reduce the risks that unaffordable payments cause consumers to reborrow, fail to meet other major financial obligations or basic living expenses, or default during a loan sequence. As noted in part II.B above, many State statutes authorizing payday loans impose caps on the loan amount, with $500 being a common limit.[603] In States that have lower limits on loan amounts, these lower limits would prevail. In addition, empirical research has found that average loan sizes are well under this threshold.[604]

In the absence of an ability-to-repay determination under proposed §§ 1041.5 and 1041.6, the Bureau believes that loans with a principal amount larger than $500 would carry a significant risk of having unaffordable payments. A loan with a principal amount of $1,000, for example, would be much harder for consumers to pay off in a single payment, and even with the stepdown features of § 1041.7(b)(1), would require the consumer to pay at least $333 plus finance charges on each of the second and third loans in the loan sequence. In contrast, on a loan with a principal amount of $500 (the largest permissible amount under proposed § 1041.7(b)(1)), a minimum of $166.66 in principal reduction would be required with each loan. For consumers who are turning to covered short-term loans because they are already struggling to meet their major financial obligations and basic living expenses,[605] the difference between payments of $333 and $167 may be quite substantial and distinguish a loan with affordable payments from a loan with unaffordable payments.

The proposed principal reduction requirements are consistent with the guidance of a Federal prudential regulator and ordinances adopted by a number of municipalities across the country. The FDIC, in its "Affordable Small-Dollar Loan Guidelines" in 2007, stated that, "Institutions are encouraged to structure payment programs in a manner that fosters the reduction of principal owed. For closed-end products, loans should be structured to provide for affordable and amortizing payments."[606] Several Oregon municipalities, including Eugene and Portland, impose a 25 percent principal stepdown requirement on renewals.[607] A number of cities in Texas, including Dallas, El Paso, Houston, and San Antonio, have also adopted similar principal stepdown requirements.[608]

The Bureau also has given extensive consideration to proposing an "off-ramp" for consumers struggling to repay a covered short-term loan, in lieu of the principal reduction structure.[609] The Bureau identified this approach as an alternative in its Small Business Review Panel Outline. Under this approach, lenders would be required to provide a no-cost extension of the third loan in a sequence (the off-ramp) if a consumer is unable to repay the loan according to its terms. As specifically proposed in the Outline, the third loan would be repaid over an additional four installments without incurring additional cost. As discussed above in Market Concerns—Short-Term Loans and in the Small Business Review Panel Outline, similar extended payment plans are required to be offered in some States and are a feature of some industry trade association best practices. In light of concerns that lenders may be failing to inform consumers of their options and actively discouraging the use of off-ramps, the Bureau noted in the Small Business Review Panel Outline that it was considering whether additional features would be needed to facilitate access to the off-ramp and prevent lender discouragement of off-ramp usage. The Small Business Review Panel Outline listed examples of possible additional conditions on the off-ramp, such as requiring lenders to notify consumers of their right to take the off-ramp and prohibiting lenders from initiating collections activity on the loan before offering the consumer an off-ramp.

During the SBREFA process, the Bureau received feedback from the SERs regarding the off-ramp option, as well as the principal reduction option discussed in the Small Business Review Panel Outline. Some SERs noted that the proposed principal reduction requirement could present compliance challenges. For example, these SERs stated that both the principal reduction requirement and the off-ramp requirement under consideration could conflict with State law requiring single payment transactions. As an alternative, one SER recommended that the Bureau adopt a provision in Washington State law that requires lenders to offer an installment plan to consumers who are unable to repay their loan.[610] During broader outreach with stakeholders following the release of the Small Business Review Panel Outline, industry stakeholders suggested that the Bureau should consider requiring an off-ramp option for borrowers unable to repay a covered short-term loan, in lieu of the proposed ability-to-repay requirements coupled with the alternative requirements. When discussing the principal reduction and off-ramp options in the context of the framework laid out in the Small Business Review Panel Outline, industry stakeholders were critical of both approaches and did not state a preference. Consumer advocates have expressed support for the principal reduction approach based on their view that off-ramps have been ineffective at the State level.

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[602] *See CFPB Data Point: Payday Lending,* at 16.

[603] *E.g.,* Ala Code § 5-18A-12(a); Iowa Code § 533D.10(1)(b).

[604] The Bureau's analysis of supervisory data indicates that the median loan amount for payday loans is around $350. *See CFPB Payday Loans and Deposit Advance Products White Paper,* at 15. As noted in part II.B above, another study found that the average loan amount borrowed was $375. *See* Pew Charitable Trusts, Payday Lending in America: Policy Solutions at 53 (2013), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutions oct2013pdf.pdf.*

[605] *See* Market Concerns—Short-Term Loans.

[606] FDIC Financial Institution Letter FIL-50-2007, *Affordable Small-Dollar Loan Guidelines,* (June 19, 2007), *available at https://www.fdic.gov/news/news/financial/2007/fil07050a.html.*

[607] Eugene Code, § 3.556, *available at https://www.eugene-or.gov/DocumentCenter/Home/View/2165*; Portland City Code, Ch. 7.25.050, *available at http://www.portlandonline.com/auditor/?c=41523.*

[608] *See City Regulation of Payday and Auto Title Lenders,* Texas Municipal League, *http://www.tml.org/payday-updates* (last updated Jan. 15, 2016).

[609] *See Small Business Review Panel Report,* at 8.

The Bureau has carefully considered the SERs' comments and the broader stakeholder feedback following the release of the Small Business Review Panel Outline. The Bureau does not believe the principal reduction requirements under proposed § 1041.7(b)(1) would conflict with State law requiring single payment transactions. The proposed requirement would not mandate payment of the loan in installments or amortization of the initial loan in the sequence. Rather, a lender that makes a series of covered short-term loans under proposed § 1041.7 would be required to reduce the principal amount over a sequence of three loans so that a loan sequence would be functionally similar to an amortizing loan.

After gathering substantial input and careful consideration, the Bureau believes that the off-ramp approach would have three significant disadvantages relative to the principal reduction structure outlined above. First, the Bureau, in proposing an alternative to the requirement to assess a consumer's ability to repay under proposed §§ 1041.5 and 1041.6, seeks to ensure that Section 7 loans do not encumber consumers with unaffordable loan payments for an extended period. As discussed in Market Concerns—Short-Term Loans, the Bureau has found that consumers who reborrow generally reborrow for the same amount as the prior loan, rather than pay off a portion of the loan amount on the previous loan and reduce their debt burden. Given these borrowing patterns, an off-ramp, which began after a sequence of three loans, would delay the onset of the principal reduction and compel consumers to carry the burden of unaffordable payments for a longer period of time, raising the likelihood of default and collateral harms from making unaffordable loan payments.

Second, the Bureau believes that an off-ramp provision likely could not be designed in a way to ensure that consumers actually receive the off-ramp. As discussed in part II.B above, the Bureau's analysis of State regulator reports indicates that consumer use of available off-ramps has been limited.[611] In addition, anecdotal evidence suggests that lenders discourage consumers from using State-imposed off-ramps.[612] Consumers can obtain an off-ramp only if they request it or make statements indicating that they, for example, lack the ability to repay the loan. If lenders are able to induce or pressure consumers into repaying the third loan in a loan sequence made under proposed § 1041.7, the off-ramp provision would never be triggered. Consumers who repay the loan when they cannot afford to repay it may miss payments on other major financial obligations or forgo basic living expenses. Thus, the Bureau remains extremely concerned that an off-ramp would not, in fact, function as an important protection against the harms from unaffordable payments because it could be so easily circumvented.

Third, to make an off-ramp approach less susceptible to such defects, the Bureau continues to believe that additional provisions would be necessary, including disclosures alerting consumers to their rights to take the off-ramp and prohibitions on false or misleading information regarding off-ramp usage and collections activity prior to completion of the full loan sequence. These measures would be of uncertain effectiveness and would increase complexity, burdens on lenders, and challenges for enforcement and supervision. In contrast, the proposed principal reduction requirements would be much simpler: The principal of the first loan could be no greater than $500, and each successive loan in the loan sequence would have a principal amount that is reduced by at least one-third. The Bureau believes this approach would both provide greater protection for consumers and offer easier compliance for lenders.

The Bureau seeks comment on whether the principal reduction requirements are appropriate under proposed § 1041.7; whether $500 is the appropriate principal limit for the first loan in the sequence; and whether a one-third reduction for each loan made under proposed § 1041.7 over the course of a three-loan sequence is the appropriate principal reduction amount and appropriate length for a loan sequence. The Bureau also seeks comment on whether the proposed principal reduction requirements would conflict with any State, local, or tribal laws and regulations. The Bureau separately seeks comment on whether, in lieu of the principal reduction requirements, the Bureau should adopt an off-ramp approach and, if so, what specific features should be included. In particular, the Bureau seeks comment on whether it should adopt the same parameters discussed in the Small Business Review Panel Outline—a cost-free extension of the third loan in the sequence over four installments—and additional measures to prevent lenders from discouraging usage of the off-ramp, such as a disclosure requirement, restrictions on collections activity prior to offering an off-ramp during a loan sequence, and prohibitions on false and misleading statements regarding consumers' use of the off-ramp. The Bureau seeks comment on whether there are other approaches that could encourage the use of an off-ramp. The Bureau also seeks comment generally on whether an off-ramp could be structured in a way that is relatively simple for compliance but still ensures that it would be made available to all consumers who qualify for it.

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[610] *See Small Business Review Panel Report,* at 22.

[611] The experience in Florida also suggests that off-ramps are not likely to be made available to all consumers who struggle to repay covered short-term loans. For borrowers who indicate that they are unable to repay the loan when due and agree to attend credit counseling, Florida law requires lenders to extend the loan term on the outstanding loan by 60 days at no additional cost. Although 84 percent of loans were made to borrowers with seven or more loans in 2014, fewer than 0.5 percent of all loans were granted a cost-free term extension. *See* Brandon Coleman & Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law, Center for Responsible Lending* at 4 (2016), *available at http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_perfect_storm_florida_mar2016_0.pdf.*

[612] The Bureau is also aware of lender self-reported evidence from Colorado State reports that lenders imposed their own cooling-off periods on borrowers who took an off-ramp as a way to dissuade borrowers from using the off-ramp mandated by Colorado State law. The report concerns a 2007 statute which required lenders to offer borrowers a no-cost repayment plan after the third balloon loan. *See* Colo. Rev. Stat. § 5-3.1-108(5). The law was changed in 2010 to require a minimum six-month loan term for what Colorado law calls "deferred deposit loans and maximum per annum interest rate of 45 percent." *See* Colo. Rev. Stat. §§ 5-3.1-103 and 5-3.1-105.

7(b)(2)

The Bureau expects that a covered short-term loan under proposed § 1041.7 would generally involve a single payment structure, consistent with industry practice today. The Bureau also expects that the principal reduction would typically be achieved via a sequence of single-payment loans each for progressively smaller amounts. Proposed § 1041.7(b)(2), however, would provide certain safeguards in the event that a lender chose to structure the loan with multiple payments, such as a 45-day loan with three required payments. Under the proposed requirement, the loan must have payments that are substantially equal in amount, fall due in substantially equal intervals, and amortize completely during the term of the loan. The proposed requirements under § 1041.7(b)(2) are consistent with the requirements for covered longer-term loans that are made under proposed §§ 1041.11 and 1041.12, the two conditional exemptions to proposed §§ 1041.8, 1041.9, 1041.10 and 1041.15 for covered longer-term loans. Proposed comment 7(b)(2)-1 provides an example of a loan with an interest-only payment followed by a balloon payment, which would not satisfy the loan structure requirement under proposed § 1041.7(b)(2).

The requirement under proposed § 1041.7(b)(2) is intended to address covered short-term loans made under proposed § 1041.7 that are structured to have multiple payments. Absent the requirements in proposed § 1041.7(b)(2), the Bureau is concerned that lenders could structure loans to pair multiple interest-only payments with a significantly larger payment of the principal amount at the end of the loan term. The Bureau believes that consumers are better able to manage repayment obligations for payments that are due with reasonable frequency, in substantially equal amounts, and within substantially equal intervals. The Bureau believes that, in the absence of an ability-to-repay determination under proposed §§ 1041.5 and 1041.6, multi-payment loans with a final balloon payment are much more likely to trigger default and up to two reborrowings than comparable loans with amortizing payments. In the comparable context of longer-term vehicle title installment loans, for example, the Bureau has found that loans with final balloon payments are associated with much higher rates of default, compared to loans with fully amortizing payments.[613] Furthermore, the balloon payment at the loans' maturity date appears to trigger significant reborrowing activity.[614]

The Small Business Review Panel Outline indicated that the Bureau was considering whether the alternative requirements for covered short-term loans should prohibit a lender from charging more than one finance charge for the duration of the loan. The Bureau did not receive feedback from the SERs regarding the specific requirement.[615] Proposed § 1041.7(b)(2) would differ from the Small Business Review Panel Outline because it would require Section 7 loans with multiple payments to have payments that are substantially equal in amount, fall due within substantially equal intervals, and amortize completely during the term of the loan.

The Bureau seeks comment on whether lenders would make covered short-term loans with multiple payments under proposed § 1041.7. The Bureau also seeks comment on whether the requirement under proposed § 1041.7(b)(2) is appropriate and on whether any additional requirements are appropriate with respect to multi-payment loans made under proposed § 1041.7. The Bureau also seeks comment on whether any alternative approaches would protect consumers from the harms of multi-payment, covered short-term loans with balloon payments. In addition, the Bureau seeks comment on whether proposed § 1041.7 should permit only single-payment covered short-term loans.

7(b)(3)

Proposed § 1041.7(b)(3) would prohibit a lender, as a condition of making a covered short-term loan under proposed § 1041.7, from obtaining vehicle security, as defined in proposed § 1041.3(d). A lender seeking to make a covered short-term loan with vehicle security would have to make an ability-to-repay determination under proposed §§ 1041.5 and 1041.6. Proposed comment 7(b)(3)-1 clarifies this prohibition on a lender obtaining vehicle security on a Section 7 loan.

The Bureau is proposing this requirement because the Bureau is concerned that some consumers obtaining a loan under proposed § 1041.7 would not be able to afford the payments required to pay down the principal over a sequence of three loans. Allowing lenders to obtain vehicle security in connection with such loans could substantially increase the harm to such consumers by putting their vehicle at risk. The proposed requirement would protect consumers from default harms, collateral harms from making unaffordable loan payments, and reborrowing harms on covered short-term vehicle title loans. First, the Bureau is particularly concerned about default that could result in the loss of the consumer's vehicle. The Bureau has found sequences of short-term vehicle title loans are more likely to end in default than sequences of payday loans,[616] and that 20 percent of loan sequences of single-payment vehicle title loans result in repossession of the consumer's vehicle.[617] A consumer's vehicle may be essential for the consumer to travel to and from work, school, and medical appointments.[618] The vehicle is likely also one of the consumer's most valuable economic assets.[619] Second, due to the potentially serious consequences of defaulting on vehicle title loans, the Bureau is concerned that consumers may take extraordinary measures to repay vehicle title loans and, as a result, fail to meet other major financial obligations or basic living expenses. Third, even with the other protections against reborrowing in proposed § 1041.7, the

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[613] *CFPB Report on Supplemental Findings,* at 31-32.

[614] *Id.* at 32-33.

[615] *Small Business Review Panel Report,* at 22.

[616] *CFPB Single-Payment Vehicle Title Lending,* at 11; *CFPB Report on Supplemental Findings,* at 120.

[617] *CFPB Single-Payment Vehicle Title Lending,* at 23.

[618] *See* Pew Charitable Trusts, Auto Title Loans: Market Practices and Borrowers' Experiences at 14 (2015), *available at http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf* ("Thirty-five percent of [vehicle title borrower] respondents report having no more than one working vehicle in their household[.]); Fritzdixon, *et al.,* at 1038 (finding that nearly 15 percent of vehicle title borrowers did not have an alternative means of getting to work).

[619] Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending,* 77 Mo. L. Rev. 41, 86 (2012). Interviews with 313 title loan borrowers found that 50 percent are renters. The Pew Charitable Trusts, *Auto Title Loans: Market Practices and Borrowers' Experiences,* at 28 (2015), *available at http://www.pewtrusts.org/~/media/Assets/2015/03/AutoTitleLoansReport.pdf?la=en.* An earlier study of Illinois title loan borrowers found that "homeownership rates for title loan borrowers are far below the national average, with 80% of title loan borrowers reporting that they rent their homes." *See* Nathalie Martin & Ernesto Longa, *High-Interest Loans and Class: Do Payday and Title Loans Really Serve the Middle Class?,* 24 Loy. Consumer L. Rev. 524, 550 (2012).

Bureau is concerned that, due to the serious consequences of defaulting on vehicle title loans, consumers may feel pressure to reborrow up to twice on unaffordable vehicle title loans.[620]

Furthermore, the Bureau believes proposed § 1041.7(b)(3) is necessary to restrict lenders' incentives to make Section 7 loans with unaffordable payments. Because loan sequences would be limited to a maximum of three Section 7 loans under proposed § 1041.7(c)(3) and subject to principal reduction under § 1041.7(b)(1), the Bureau believes a lender that makes Section 7 loans would have a strong incentive to underwrite effectively, even without having to comply with the specific requirements in proposed §§ 1041.5 and 1041.6. However, with vehicle title loans, in which the lender obtains security interest in an asset of significantly greater value than the principal amount on the loan,[621] the Bureau is concerned that a lender would have much less incentive to evaluate the consumer's ability to repay. The lender could repossess the vehicle if the loan were not repaid in full, even after the first loan in the sequence.

While Section 7 loans with vehicle security would be prohibited, the Bureau notes that there would be alternatives available to consumers and lenders. Lenders could make covered short-term loans with vehicle security that comply with the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6. In addition, many lenders could offer covered longer-term loans with vehicle security that comply with the ability-to-repay requirements in proposed §§ 1041.9 and 1041.10. Lenders may, in fact, be able to recoup the costs of an ability-to-repay determination more easily for a covered longer-term loan than for a covered short-term loan of comparable amount. Furthermore, in most States that permit short-term vehicle title loans, payday lending is also permitted.[622] Accordingly, lenders could offer Section 7 loans if they decide such an alternative (including satisfying additional State licensing requirements where applicable) is advantageous.

The Bureau included this requirement in the Small Business Review Panel Outline. During the SBREFA process, the Bureau received feedback from a SER that is a vehicle title lender questioning the need for this requirement and urging the Bureau to consider permitting vehicle title loans to be made under the alternative requirements for covered short-term loans. The Bureau has considered this feedback but, as described above, the Bureau remains concerned that the harms from unaffordable payments on covered short-term loans with vehicle security may be especially severe for consumers. In light of these concerns, the Bureau believes it is appropriate to prohibit lenders, as a condition of making covered short-term loans under the conditional exemption in proposed § 1041.7, from obtaining vehicle security.

The Bureau seeks comment on the protective benefits of this proposed prohibition. The Bureau also seeks comment on whether there are alternative approaches that could allow vehicle title lending under the proposed conditional exemption for certain covered short-term loans and still provide strong protections against the harms that can result to consumers who lack the ability to repay their loans, including default and potential loss of the consumer's vehicle, collateral harms from making unaffordable loan payments, and reborrowing.

7(b)(4)

Proposed § 1041.7(b)(4) would provide that, as a requirement of making a covered short-term loan under proposed § 1041.7, the loan must not be structured as an open-end loan. Proposed comment 7(b)(4)-1 clarifies this prohibition on a lender structuring a Section 7 loan as an open-end loan.

The Bureau is concerned that permitting open-end loans under proposed § 1041.7 would present significant risks to consumers, as consumers could repeatedly draw down credit without the lender ever determining the consumer's ability to repay. In practice, consumers could reborrow serially on a *single* Section 7 loan structured as an open-end loan. These consumers would not receive the important protections in proposed § 1041.7, including the ability to gradually reduce their debt burden over the course of a sequence of three Section 7 loans. The Bureau also believes that attempting to develop restrictions for open-end loans in proposed § 1041.7 would add undue complexity without providing appreciable benefit for consumers.

The Small Business Review Panel Outline did not include this requirement as part of the proposed alternative requirements for covered short-term loans. Based on further consideration, the Bureau believes this requirement is necessary for the reasons described above. The Bureau seeks comment on whether proposed § 1041.7 should include this requirement and whether lenders, in the absence of this requirement, would make covered short-term loans under proposed § 1041.7 that are structured as open-end loans.

7(c) Borrowing History Requirements

Proposed § 1041.7(c) would require the lender to determine that the borrowing history requirements under proposed § 1041.7(c) are satisfied before making a Section 7 loan.

In conjunction with the other requirements set forth in proposed § 1041.7, the borrowing history requirements under proposed § 1041.7(c) are intended to prevent consumers from falling into long-term cycles of reborrowing and diminish the likelihood that consumers would experience harms during shorter loan sequences.

7(c)(1)

Proposed § 1041.7(c)(1) would require the lender to examine the consumer's borrowing history to ensure that it does not make a covered short-term loan under proposed § 1041.7 when certain types of covered loans are outstanding. Specifically, it would provide that, as a requirement of making a covered short-term loan under proposed § 1041.7, the lender must determine that the consumer does not have a covered loan outstanding made under proposed § 1041.5, proposed § 1041.7, or proposed § 1041.9, not including a loan made under proposed § 1041.7 that the same lender seeks to roll over.

Proposed comment 7(c)(1)-1 clarifies the meaning of this restriction and provides a cross-reference to the definition of outstanding loan in proposed § 1041.2(a)(15). Proposed comment 7(c)(1)-2 explains that the restriction in proposed § 1041.7(c)(1) does not apply to an outstanding loan made by the same lender or an affiliate under proposed § 1041.7 that is being rolled over.

The Bureau is proposing § 1041.7(c)(1) because it is concerned that consumers who have a covered loan outstanding made under proposed § 1041.5, proposed § 1041.7, or proposed § 1041.9 and seek a new, concurrent covered short-term loan may be struggling to repay the outstanding loan. These consumers may be seeking the new loan to retire the outstanding loan or to cover major financial obligations or basic living expenses that they cannot afford if they make one or more payments on the outstanding loan.[623] In the absence of an ability-to-repay determination under proposed §§ 1041.5 and 1041.6, however, the lender would not determine whether the new loan would cause the consumer to fall deeper into a financial hole and suffer additional reborrowing, default, or collateral harms from making unaffordable loan payments. Accordingly, the Bureau believes that making a loan without an ability-to-repay determination under proposed § 1041.7 would be inappropriate given the borrower's circumstances.

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[620] A single-payment short-term vehicle title loan is less likely to be repaid after one loan than a payday loan. *CFPB Single-Payment Vehicle Title Lending,* at 11; *CFPB Report on Supplemental Findings,* at 120.

[621] For short-term title loans, loan-to-value ratios have been estimated to be between 25 and 40 percent. *See* discussion in part II.B above.

[622] *See* part II.B.

The Bureau has addressed comparable concerns about concurrent outstanding loans in the context of covered short-term loans made under proposed §§ 1041.5 and 1041.6, in two ways. First, the lender would be required to obtain information about current debt obligations (a subset of major financial obligations) under proposed § 1041.5(c) and to account for it as part of its ability-to-repay determination for any new loan. Second, a new, concurrent loan would be considered the second loan in the loan sequence of consecutive covered short-term loans and thereby would trigger the presumption of unaffordability for a covered short-term loan under proposed § 1041.6(b)(1), unless the exception under proposed § 1041.6(b)(2) applies. Covered short-term loans made under proposed § 1041.7 would *not* have these means of accounting for the outstanding debt. As a result, the Bureau believes the requirement under proposed § 1041.7(c)(1) would ensure that consumers, who already have a covered loan outstanding made under § 1041.5, § 1041.7, or § 1041.9, would not increase their total debt burden and suffer additional harms from unaffordable loan payments on a new loan under proposed § 1041.7.

One outside study examined a dataset with millions of payday loans and found that approximately 15 to 25 percent of these loans are taken out while another loan is outstanding.[624] The Bureau believes that this finding indicates that concurrent borrowing occurs frequently enough to warrant concern and that, without this proposed requirement, consumers could routinely take out concurrent covered short-term loans not subject to the proposed ability-to-repay determination and suffer harms as a result.

For the proposed alternative set of requirements for covered short-term loans, the Small Business Review Panel Outline required that the consumer have no covered loans outstanding.[625] The Bureau received little feedback from the SERs or other industry stakeholders on this provision during the SBREFA process and general outreach. The Bureau notes that proposed § 1041.7(c)(1) differs from the Small Business Review Panel Outline because it would not apply to outstanding covered longer-term loans made under proposed § 1041.11 and § 1041.12. Upon further consideration, the Bureau believes that it is unlikely that consumers would move from one of those loans to a short-term alternative loan under proposed § 1041.7 in the first instance.[626] In contrast, the Bureau believes that it is important to apply this proposed requirement to covered loans subjected to the ability to repay requirements in proposed §§ 1041.5 and 1041.6 and proposed §§ 1041.9 and 1041.10 to ensure that lenders do not use combinations of different kinds of loans to try to evade the safeguards against loans with unaffordable payments in proposed §§ 1041.6 and 1041.10.

The Bureau seeks comment on whether the requirement under proposed § 1041.7(c)(1) is appropriate. The Bureau also seeks comment on whether the requirement under proposed § 1041.7(c)(1) should apply to covered loans outstanding made under proposed § 1041.11 or § 1041.12. The Bureau further seeks comment on whether there are alternative approaches to the proposed requirement that would still protect consumers against the potential harms from taking concurrent loans.

7(c)(2)

Proposed § 1041.7(c)(2) would require that, prior to making a covered short-term loan under § 1041.7, the lender determine that the consumer has not had in the past 30 days an outstanding loan that was either a covered short-term loan (as defined in § 1041.2(a)(6)) made under proposed § 1041.5 or a covered longer-term balloon-payment loan (as defined in § 1041.2(a)(7)) made under proposed § 1041.9. The requirement under proposed § 1041.7(c)(2) would prevent a consumer from obtaining a covered short-term loan under proposed § 1041.7 soon after repaying a covered short-term made under proposed § 1041.5 or a covered longer-term balloon-payment loan made under proposed § 1041.9. Proposed comment 7(c)(2)-1 explains that this requirement would apply regardless of whether the prior loan was made by the same lender, an affiliate of the lender, or an unaffiliated lender. The proposed comment also provides an illustrative example.

Much as with proposed § 1041.7(c)(1) as discussed above, proposed § 1041.7(c)(2) would protect consumers, who lack the ability to repay a current or recent covered short-term or balloon-payment loan, from the harms of a covered short-term loan made without an ability-to-repay determination under proposed §§ 1041.5 and 1041.6. As explained in Market Concerns—Short-Term Loans, the Bureau believes that such reborrowing frequently reflects the adverse budgetary effects of the prior loan and the unaffordability of the new loan. Indeed, for that reason, the Bureau is proposing to create a presumption of unaffordability for a covered short-term loans subject to the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6. This presumption would be undermined if consumers, who would be precluded from reborrowing by the presumption under proposed § 1041.6, could simply transition to covered short-term loans made under proposed § 1041.7.

Moreover, permitting a consumer to transition from a covered short-term loan made under proposed § 1041.5 or a covered longer-term balloon-payment loan made under proposed § 1041.9 to a covered short-term loan made under proposed § 1041.7 would be inconsistent with the basic purpose of proposed § 1041.7. As previously noted, proposed § 1041.7 creates an alternative to the ability-to-pay requirements under proposed §§ 1041.5 and 1041.6 and features carefully structured consumer protections. If lenders were permitted to make a Section 7 loan shortly after making a covered short-term under proposed § 1041.5 or a covered longer-term balloon-payment loan under proposed § 1041.9, it would be very difficult to apply all of the requirements under proposed § 1041.7 that are designed to protect consumers. As noted, proposed § 1041.7(b)(1)(i) would require that the first loan in a loan sequence of Section 7 loans have a principal amount no greater than $500, and proposed § 1041.7(b)(1)(ii) and (iii) would impose principal reduction requirements for additional Section 7 loans that are part of the same loan sequence. If a consumer were permitted to transition from a covered short-term or balloon-payment loan made under proposed § 1041.5 to a covered short-term loan made under proposed § 1041.7, the principal reduction requirements under proposed § 1041.7(b)(1) would be undermined.

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[623] A consumer also could be seeking a concurrent loan because State laws limit the amount of principal that may be borrowed. Thus, for some borrowers the same needs that triggered the decision to take out the first loan may be triggering the decision to seek the concurrent loan.

[624] nonPrime101, Report 7-A: How Persistent Is the Borrower-Lender Relationship in Payday Lending 17-23 (2015), *available at https://www.nonprime101.com/data-findings/*.

[625] *Small Business Review Panel Report*, at 432.

[626] The loans include various protections tied to loan duration, cost or other loan terms, or portfolio performance, and would not be as limited in amount and duration as loans under § 1041.7. The Bureau believes that there would be little incentive for consumers or lenders to move across loan products in this way, and information on such loans would be less readily available in any event under proposed §§ 1041.11 and 1041.12.

The Bureau also believes providing separate paths for covered short-term loans that are made under the ability-to-repay framework in proposed §§ 1041.5 and 1041.6 and under the framework in proposed § 1041.7 would make the rule's application more consistent across provisions and also simpler for both consumers and lenders. These two proposed frameworks would work in tandem to ensure that lenders could not transition consumers back and forth between covered short-term loans made under proposed § 1041.5 and under proposed § 1041.7. Furthermore, with these proposed provisions in place, consumers and lenders would have clear expectations of the types of covered short-term loans that could be made if the consumer were to reborrow.

The Bureau seeks comment on whether this requirement is appropriate. The Bureau also seeks comment on whether there are alternative approaches that would allow consumers to receive covered short-term loans made under both proposed § 1041.5 and proposed § 1041.7 in a loan sequence and still maintain the integrity of the consumer protections under the two proposed sections.

7(c)(3)

Proposed § 1041.7(c)(3) would provide that a lender cannot make a covered short-term loan under § 1041.7 if the loan would result in the consumer having a loan sequence of more than three Section 7 loans made by any lender. Proposed comment 7(c)(3)-1 clarifies that this requirement applies regardless of whether any or all of the loans in the loan sequence are made by the same lender, an affiliate, or unaffiliated lenders and explains that loans that are rollovers count toward the sequence limitation. Proposed comment 7(c)(3)-1 includes an example.

The Bureau is proposing § 1041.7(c)(3) for several reasons. First, the limitation on the length of loan sequences is aimed at preventing further harms from reborrowing. As discussed in the Supplemental Findings on Payday Loans, Deposit Advance Products, and Vehicle Title Loans, the Bureau found that 66 percent of loan sequences that reach a fourth loan end up having at least seven loans, and 47 percent of loan sequences that reach a fourth loan end up having at least 10 loans.[627] Second, the Bureau believes that a three-loan limit would be consistent with evidence presented in the Supplemental Findings on Payday Loans, Deposit Advance Products, and Vehicle Title Loans, noted above, that approximately 38 percent of new loan sequences end by the third loan without default.[628] Third, a three-loan limit would work in tandem with the principal restrictions in proposed § 1041.7(b)(1) to allow consumers to repay a covered short-term loan in manageable one-third increments over a loan sequence. Fourth, a three-loan limit would align with proposed § 1041.6(f), which would prohibit a lender from making another short-term covered loan after the third loan in a sequence of covered short-term loans made under proposed § 1041.5. Fifth, the Bureau believes that a three-loan limit would provide lenders with a strong incentive to evaluate the consumer's ability to repay before making Section 7 loans, albeit without complying with the specific ability-to-repay requirements in proposed §§ 1041.5 and 1041.6.

The Small Business Review Panel Outline stated that the Bureau was considering a proposal to limit the length of a loan sequence of covered short-term loans made under the alternative requirements for covered short-term loans. The Bureau received feedback during the SBREFA process from small lenders that the sequence limitations would significantly reduce their revenue. During the SBREFA process and the Bureau's general outreach following the Bureau's release of the Small Business Review Panel Outline, many lenders and other industry stakeholders argued that the alternative requirements for covered short-term loans presented in the Small Business Review Panel Outline did not provide sufficient flexibility. As noted above, a group of SERs submitted a report projecting significantly lower revenue and profits for small lenders if they originated loans solely under the alternative approach. The Small Business Review Panel Report recommended that the Bureau request comment on whether permitting more than three loans under these requirements would enable the Bureau to satisfy its stated objectives for this rulemaking while reducing the revenue impact on small entities making covered short-term loans.[629]

The Bureau seeks comment on whether the requirement under proposed § 1041.7(c)(3) is appropriate and also whether three covered short-term loans is the appropriate number for the limitation on the length of a loan sequence under proposed § 1041.7(c)(3). The Bureau specifically seeks comment on whether, given the principal reduction requirement for the second and third loans made under proposed § 1041.7, a four-loan sequence limit, with a 25 percent step down for each loan would be more affordable for consumers than loans made under a three-loan limit with a 33 percent step down. Moreover, consistent with the Small Business Review Panel recommendation, the Bureau seeks comment on whether permitting a loan sequence of more than three Section 7 loans would enable the Bureau to satisfy its stated objectives for the proposed rulemaking while reducing the impact on small entities making covered short-term loans.

7(c)(4)

Proposed § 1041.7(c)(4) would require that a covered short-term loan made under proposed § 1041.7 not result in the consumer having more than six covered short-term loans outstanding during any consecutive 12-month period (also referred to as the "Section 7 loan limit") or having covered short-term loans outstanding for an aggregate period of more than 90 days during any consecutive 12-month period (also referred to as the "Section 7 indebtedness limit"). The lender would have to determine whether any covered short-term loans were outstanding during the consecutive 12-month period. If a consumer obtained a covered short-term loan prior to the consecutive 12-month period and was obligated on the loan during part of the consecutive 12-month period, this loan and the time in which it was outstanding during the consecutive 12-month period would count toward the Section 7 loan and Section 7 indebtedness limits.

Proposed comment 7(c)(4)-1 explains the meaning of consecutive 12-month period as used in proposed § 1041.7(c)(4). The proposed comment clarifies that a consecutive 12-month period begins on the date that is 12 months prior to the proposed contractual due date of the new Section 7 loan and ends on the proposed contractual due date. Proposed comment 7(c)(4)-1 explains further that the lender would have to obtain information about the consumer's borrowing history on covered short-term loans for the 12 months preceding the proposed contractual due date on that loan. Proposed comment 7(c)(4)-1 also provides an example.

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[627] Results calculated using data described in Chapter 5 of the CFPB Report on Supplemental Findings.

[628] *See CFPB Report on Supplemental Findings,* at 116-17.

[629] *Small Business Review Panel Report,* at 32.

Under proposed § 1041.7(c)(4), the lender would have to count the proposed new loan toward the Section 7 loan limit and count the anticipated contractual duration of the new loan toward the Section 7 indebtedness limit. Because the new loan and its proposed contractual duration would count toward these limits, the lookback period would *not* start at the *consummation date* of the new loan. Instead, the lookback period would start at the *proposed contractual due date* of the final payment on the new loan and consider the full 12 months immediately preceding this date.

As a general matter, the Bureau is concerned about consumers' frequent use of covered short-term loans made under proposed § 1041.7 for which lenders are not required to determine consumers' ability to repay. The frequent use of covered short-term loans that do not require an ability-to-repay determination may be a signal that consumers are struggling to repay such loans without reborrowing. For purposes of determining whether the making of a loan would satisfy the Section 7 loan and Section 7 indebtedness limits under proposed § 1041.7(c)(4), the lender would also have to count covered short-term loans made under both proposed § 1041.5 and proposed § 1041.7. Although loans made under proposed § 1041.5 would require the lender to make a reasonable determination of a consumer's ability to repay, the consumer's decision to seek a Section 7 loan, after previously obtaining a covered short-term loan based on an ability-to-repay determination, suggests that the consumer may now lack the ability to repay the loan and that an earlier ability-to-repay determination may not have fully captured this particular consumer's expenses or obligations. Under proposed § 1041.7(c)(4), consumers could receive up to six Section 7 loans and accrue up to 90 days of indebtedness on Section 7 loans, assuming the consumer did not also have any covered short-term loans made under proposed § 1041.5 during the same time period. Because the duration of covered short-term loans are typically tied to how frequently a consumer receives income, the Bureau believes that the two overlapping proposed requirements are necessary to provide more complete protections for consumers.

The Bureau seeks comment on whether the number of and period of indebtedness on covered short-term loans made under proposed § 1041.5 should count toward the Section 7 loan and Section 7 indebtedness limits, respectively. The Bureau also seeks comment on whether there are alternative approaches that would address the Bureau's concerns about a high number of and long aggregate period of indebtedness on covered short-term loans made without the ability-to-repay determination under proposed §§ 1041.5 and 1041.6. The Bureau also seeks comment on whether proposed § 1041.7(c)(4) should count loans with a term that partly fell in the 12-month period toward the Section 7 loan and Section 7 indebtedness limits or alternatively should count only covered short-term loans that were consummated during the consecutive 12-month period toward the Section 7 loan and Section 7 indebtedness limits.

7(c)(4)(i)

Proposed § 1041.7(c)(4)(i) would require that a covered short-term loan made under proposed § 1041.7 not result in the consumer having more than six covered short-term loans outstanding during any consecutive 12-month period. This proposed requirement would impose a limit on the total number of Section 7 loans during a consecutive 12-month period.

Proposed comment 7(c)(4)(i)-1 explains certain aspects of proposed § 1041.7(c)(4)(i) relating to the Section 7 loan limit. Proposed comment 7(c)(4)(i)-1 clarifies that, in addition to the new loan, all covered short-term loans made under either proposed § 1041.5 or proposed § 1041.7 that were outstanding during the consecutive 12-month period count toward the Section 7 loan limit. Proposed comment 7(c)(4)(i)-1 also clarifies that, under proposed § 1041.7(c)(4)(i), a lender may make a loan that when aggregated with prior covered short-term loans would satisfy the Section 7 loan limit even if proposed § 1041.7(c)(4)(i) would prohibit the consumer from obtaining one or two subsequent loans in the sequence. Proposed comment 7(c)(4)(i)-2 gives examples.

The Bureau believes that a consumer who seeks to take out a new covered short-term loan after having taken out six covered short-term loans during a consecutive 12-month period may be exhibiting an inability to repay such loans. If a consumer is seeking a seventh covered short-term loan under proposed § 1041.7 in a consecutive 12-month period, this consumer may, in fact, be using covered short-term loans to cover regular expenses and compensate for chronic income shortfalls, rather than to cover an emergency or other non-recurring need.[630] Under these circumstances, the Bureau believes that the lender should make an ability-to-repay determination in accordance with proposed §§ 1041.5 and 1041.6 before making additional covered short-term loans and ensure that the payments on any subsequent loan are affordable for the consumer. If the consumer were found to be ineligible for a covered short-term loan following the ability-to-repay determination, this would suggest that the Section 7 loan limit was having its intended effect and that the consumer would not be able to afford another Section 7 loan.

The specific limit of six Section 7 loans in a consecutive twelve-month period in proposed § 1041.7(c)(4)(i) is also informed by the decisions of Federal prudential regulators and two States that have directly or indirectly set limits on the total number of certain covered short-term loans a consumer can obtain during a prescribed time period. As described in part II.B above, the FDIC and the OCC in late 2013 issued supervisory guidance on DAP (FDIC DAP Guidance and OCC DAP Guidance, respectively).[631] The OCC DAP Guidance and FDIC DAP Guidance set the supervisory expectation that regulated banks require each deposit advance to be repaid in full before the extension of a subsequent advance, offer no more than one deposit advance loan per monthly statement cycle, and impose a cooling-off period of at least one monthly statement cycle after the repayment of a deposit advance.[632] Taken collectively, these guidelines established the supervisory norm that institutions regulated by the FDIC or OCC should make no more than six deposit advances per year to a customer.

Two States have also placed a cap on the number of covered short-term loans a consumer can receive in a year. In 2010, Washington State enacted an annual loan cap that restricts the number of loans a consumer may receive from all lenders to a maximum of eight in a 12-month period.[633]

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[630] Market Concerns—Short-Term Loans; Levy & Sledge, at 12.

[631] OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 26, 2013); FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013).

[632] *Id.*

[633] Wash. Rev. Code § 31.45.073(4). The Bureau examined the impacts of the Washington State

Delaware implemented a cap of five loans in any 12-month period in 2013.[634]

The Bureau seeks comment on whether it is appropriate to establish a Section 7 loan limit. The Bureau also seeks comment on whether six covered short-term loans made under proposed § 1041.7 is the appropriate Section 7 loan limit or whether a smaller or larger number should be considered by the Bureau. The Bureau also seeks comment on the impact of the Section 7 loan limit on small entities.

7(c)(4)(ii)

Proposed § 1041.7(c)(4)(ii) would require that a covered short-term loan made under proposed § 1041.7 not result in the consumer having covered short-term loans outstanding for an aggregate period of more than 90 days during any consecutive 12-month period. This proposed requirement would limit the consumer's aggregate period of indebtedness on such loans during a consecutive 12-month period.

Proposed comment 7(c)(4)(ii)-1 clarifies certain aspects of proposed § 1041.7(c)(4)(ii) relating to the Section 7 indebtedness limit. Proposed comment 7(c)(4)(ii)-1 explains that, in addition to the new loan, the time period in which all covered short-term loans made under either § 1041.5 or § 1041.7 were outstanding during the consecutive 12-month period count toward the Section 7 indebtedness limit. Proposed comment 7(c)(4)(ii)-1 also clarifies that, under proposed § 1041.7(c)(4)(ii), a lender may make a loan with a proposed contractual duration, which when aggregated with the time outstanding of prior covered short-term loans, would satisfy the Section 7 indebtedness limit even if proposed § 1041.7(c)(4)(ii) would prohibit the consumer from obtaining one or two subsequent loans in the sequence. Proposed comment 7(c)(4)(ii)-2 gives examples.

The Bureau believes it is important to complement the proposed six-loan limit with the proposed 90-day indebtedness limit in light of the fact that loan durations may vary under proposed § 1041.7. For the typical two-week payday loan, the two thresholds would reach the same result, since a limit of six-loans under proposed § 1041.7 means that the consumer can be in debt on such loans for up to approximately 90 days per year or one quarter of the year. For 30- or 45-day loans, however, a six-loan limit would mean that the consumer could be in debt for 180 days or 270 days out of a 12-month period. This result would be inconsistent with protecting consumers from the harms associated with long cycles of indebtedness.

Given the income profile and borrowing patterns of consumers who borrow monthly, the Bureau believes the proposed Section 7 indebtedness limit is an important protection for these consumers. Consumers who receive 30-day payday loans are more likely to live on fixed incomes, typically Social Security.[635] Fifty-eight percent of monthly borrowers were identified as recipients of government benefits in the Bureau's 2014 Data Point.[636] These borrowers are particularly vulnerable to default and collateral harms from making unaffordable loan payments. The Bureau has found that borrowers receiving public benefits are more highly concentrated toward the lower end of the income range. Nearly 90 percent of borrowers receiving public benefits reported annual incomes of less than $20,000, whereas less than 30 percent of employed borrowers reported annual incomes of less than $20,000.[637] Furthermore, because public benefits are typically fixed and do not vary from month to month,[638] in contrast to wage income that is often tied to the number of hours worked in a pay period, the Bureau believes monthly borrowers are more likely than biweekly borrowers to use covered short-term loans to compensate for a chronic income shortfall rather than to cover an emergency or other non-recurring need.

The Bureau has found that borrowers on fixed incomes are especially likely to struggle with repayments and face the burden of unaffordable loan payments for an extended period of time. As noted in the Supplemental Findings on Payday Loans, Deposit Advance Products, and Vehicle Title Loans, for loans taken out by consumers who are paid monthly, more than 40 percent of all loans to these borrowers were in sequences that, once begun, persisted for the rest of the year for which data were available.[639] The Bureau also found that approximately 20 percent of borrowers[640] paid monthly averaged at least one loan per pay period.

In light of these considerations, the Bureau believes that a consumer who has been in debt for more than 90 days on covered short-term loans, made under either proposed § 1041.5 or proposed § 1041.7, during a consecutive 12-month period may be exhibiting an inability to repay such loans. If a consumer is seeking a covered short-term loan under proposed § 1041.7 that would result in a total period of indebtedness on covered short-term loans of greater than 90 days in a consecutive 12-month period, this consumer may, in fact, be using covered short-term loans to cover regular expenses and compensate for chronic income shortfalls, rather than to cover an emergency or other non-recurring need.[641] Under these circumstances, the Bureau believes that the lender should make an ability-to-repay determination in accordance with proposed §§ 1041.5 and 1041.6 before making additional covered short-term loans and ensure that the payments on any subsequent loan are affordable for the consumer. If the consumer were found to be ineligible for a covered short-term loan following the ability-to-repay determination, this would suggest that the Section 7 indebtedness limit was having its intended effect and that the consumer would not be able to afford another Section 7 loan.

Proposed § 1041.7(c)(4)(ii) is also consistent with the policy choice embodied in the FDIC's 2005 supervisory guidance on payday lending. The FDIC recommended limits on the total time of indebtedness during a consecutive 12-month period.[642] Among other guidelines, the FDIC advised that:

> Depository institutions should ensure that payday loans are not provided to customers who had payday loans outstanding at any lender for a total of three months during the previous 12 months. When calculating the three-month period, institutions should consider the customers' total use of payday loans at all lenders. When a customer has

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statutory regime in Chapter 3, Part B of the CFPB Report on Supplemental Findings.

[634] Del. Code Ann. Tit. 5, § 2235A(a)(1).

[635] Due dates on covered short-term loans generally align with how frequently a consumer receives income. Consumers typically receive public benefits, including Social security and unemployment, on a monthly basis. *See CFPB Payday Loans and Deposit Advance Products White Paper,* at 15, 19.

[636] *CFPB Data Point: Payday Lending,* at 14.

[637] The Bureau previously noted in April 2013 in the CFPB White Paper that a significant share of consumers (18 percent) reported a form of public assistance or other benefits as an income source (*e.g.,* Social Security payments); these payments are usually of a fixed amount, typically occurring on a monthly basis; and that borrowers reporting public assistance or benefits as their income source are more highly concentrated towards the lower end of the income range for the payday borrowers in our sample. *See CFPB Payday Loans and Deposit Advance Products White Paper,* at 18-20.

[638] *Id.,* at 19.

[639] *CFPB Report on Supplemental Findings,* at 131.

[640] *CFPB Report on Supplemental Findings,* at 121.

[641] Market Concerns—Short-Term Loans; Levy & Sledge, at 12.

[642] FDIC Financial Institution Letter FIL-14-2005, Guidelines for Payday Lending, (Mar. 1, 2005), *available at https://www.fdic.gov/news/news/financial/2005/fil1405a.html.*

used payday loans more than three months in the past 12 months, institutions should offer the customer, or refer the customer to, an alternative longer-term credit product that more appropriately suits the customer's needs. Whether or not an institution is able to provide a customer alternative credit products, an extension of a payday loan is not appropriate under such circumstances.[643]

The Bureau seeks comment on whether it is appropriate to establish a Section 7 indebtedness limit. The Bureau also seeks comment on whether 90 days of Section 7 indebtedness is the appropriate period for the Section 7 indebtedness limit or whether a shorter or longer period of time should be considered by the Bureau. Furthermore, consistent with the Small Business Review Panel recommendation, the Bureau seeks comment on whether a period of indebtedness longer than 90 days per consecutive 12-month period would permit the Bureau to fulfill its objectives for the rulemaking while reducing the revenue impact on small entities.[644] The Bureau also seeks comment on the interplay between the proposed definition of outstanding loan and the requirement under proposed § 1041.7(c)(4)(ii). In addition, the Bureau seeks comment on whether contractual indebtedness should be the standard by which a covered short-term loan's duration is measured for purposes of the Section 7 indebtedness limit in proposed § 1041.7(c)(4)(ii).

7(d) Determining Period Between Consecutive Covered Short-Term Loans Made Under the Conditional Exemption

Under proposed § 1041.7(d), if a lender or an affiliate makes a non-covered bridge loan during the time any covered short-term loan made by a lender or an affiliate under proposed § 1041.7 is outstanding and for 30 days thereafter, the lender or an affiliate must modify its determination of loan sequence for the purpose of making a subsequent Section 7 loan. Specifically, the lender or an affiliate must not count the days during which the non-covered bridge loan is outstanding in determining whether a subsequent Section 7 loan made by the lender or an affiliate is part of the same loan sequence as the prior Section 7 loan.

Proposed comment 7(d)-1 provides a cross-reference to proposed § 1041.2(a)(13) for the definition of non-covered bridge loan. Proposed comment 7(d)-2 clarifies that proposed § 1041.7(d) provides for certain rules for determining whether a loan is part of a loan sequence when a lender or an affiliate makes both covered short-term loans under § 1041.7 and a non-covered bridge loan in close succession. Proposed comment 7(d)-3 provides an illustrative example.

The Bureau believes that proposed § 1041.7(d) would maintain the integrity of a core protection in proposed § 1041.7(b). If a lender could make a non-covered bridge loan to keep a consumer in debt and reset a consumer's loan sequence after 30 days, it could make a lengthy series of $500 covered short-term loans under proposed § 1041.7 and evade the principal stepdown requirements in proposed § 1041.7(b)(1). In the absence of this proposed restriction, a consumer could experience an extended period of indebtedness after taking out a combination of covered short-term loans under § 1041.7 and non-covered bridge loans and not have the ability to gradually pay off the debt obligation by means of the principal reduction requirement in proposed § 1041.7(b)(1). Proposed § 1041.7(d) parallels the restriction in proposed § 1041.6(h) applicable to covered short-term loans made under proposed § 1041.5.

The Bureau seeks comment on whether this proposed restriction is appropriate. The Bureau also seeks comment on whether lenders would anticipate making covered short-term loans under proposed § 1041.7 and non-covered bridge loans to consumers close in time to one another, if permitted to do so under a final rule.

7(e) Disclosures

Proposed § 1041.7(e) would require a lender to provide disclosures before making the first and third loan in a sequence of Section 7 loans. Proposed comment 7(e)-1 clarifies the proposed disclosure requirements.

The disclosures are designed to provide consumers with key information about how the principal amounts and the number of loans in a loan sequence would be limited for covered short-term loans made under proposed § 1041.7 before they take out their first and third loans in a sequence. The Bureau developed model forms for the proposed disclosures through consumer testing.[645] The notices in proposed § 1041.7(e)(2)(i) and § 1041.7(e)(2)(ii) would have to be substantially similar to the model forms. Proposed § 1041.7(e) would require a lender to provide the notices required under proposed § 1041.7(e)(2)(i) and § 1041.7(e)(2)(ii) before the consummation of a loan. Proposed comment 7(e)-1 explains the proposed disclosure requirements.

The Bureau believes that the proposed disclosures would help inform consumers of the features of Section 7 loans in such a manner as to make the costs, benefits, and risks clear. The Bureau believes that the proposed disclosures would, consistent with Dodd-Frank section 1032(a), ensure that these costs, benefits, and risks are fully, accurately, and effectively disclosed to consumers. In the absence of the proposed disclosures, the Bureau is concerned that consumers are less likely to appreciate the risk of taking a loan with mandated principal reductions or understand the proposed restrictions on Section 7 loans that are designed to protect consumers from the harms of unaffordable loan payments.

The Bureau believes that it is important for consumers to receive the proposed notices before they are contractually obligated on a Section 7 loan. By receiving the proposed notices before consummation, a consumer can make a more fully informed decision, with an awareness of the features of a Section 7 loan, including specifically the limits on taking additional Section 7 loans in the near future. The Bureau believes that some consumers, when informed of the restrictions on taking subsequent loans in a sequence of Section 7 loans, may opt not to take the loan. If the proposed notices only had to be provided after the loan has been consummated, however, consumers would be unable to use this information in deciding whether to obtain a Section 7 loan.

The Bureau seeks comment on the appropriateness of the proposed disclosures and whether they would effectively aid consumer understanding of Section 7 loans. Furthermore, the Bureau seeks comment on the specific elements in the proposed disclosures. The Bureau also seeks comment on the costs and burdens on lenders to provide the proposed disclosures to consumers.

7(e)(1) General Form of Disclosures

Proposed § 1041.7(e)(1) would establish the form of disclosures that would be provided under proposed § 1041.7. The format requirements generally parallel the format requirements for disclosures related to payment transfers under proposed § 1041.15, as discussed below. Proposed § 1041.7(e)(1)(i) would require that the disclosures be clear and conspicuous. Proposed § 1041.7(e)(1)(ii) would require that the disclosures be in provided in writing or through electronic delivery. Proposed § 1041.7(e)(1)(iii) would require the disclosures to be provided in retainable form. Proposed § 1041.7(e)(1)(iv) would require the notices to be segregated from other items and to contain only the information in proposed § 1041.7(e)(2). Proposed § 1041.7(e)(1)(v) would require electronic notices to have machine readable text. Proposed § 1041.7(e)(1)(vi) would require the disclosures to be substantially similar to the model forms for the notices required under § 1041.7(e)(2)(i) and (ii).

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[643] FDIC Financial Institution Letter FIL-14-2005, Guidelines for Payday Lending, (Mar. 1, 2005), *available at https://www.fdic.gov/news/news/financial/2005/fil1405a.html.*

[644] *See Small Business Review Panel Report,* at 32.

[645] *See FMG Report,* at 11-15, 40-41.

7(e)(1)(i) Clear and Conspicuous

Proposed § 1041.7(e)(1)(i) would provide that the disclosures required by § 1041.7 must be clear and conspicuous. The disclosures may use commonly accepted abbreviations that would be readily understandable by the consumer. Proposed comment 7(e)(1)(i)-1 clarifies that disclosures are clear and conspicuous if they are readily understandable and their location and type size are readily noticeable to consumers. This clear and conspicuous standard is based on the standard used in other consumer financial services laws and their implementing regulations, including Regulation E Subpart B (Remittance Transfers).[646] Requiring that the disclosures be provided in a clear and conspicuous manner would aid consumer understanding of the information in the disclosure about the risks and restrictions on obtaining a sequence of covered short-term loans under § 1041.7, consistent with the Bureau's authority under section 1032(a) of the Dodd-Frank Act.

The Bureau seeks comment on this clear and conspicuous standard and whether it is appropriate for the proposed disclosures.

7(e)(1)(ii) In Writing or Electronic Delivery

Proposed § 1041.7(e)(1)(ii) would require disclosures mandated by proposed § 1041.7(e) to be provided in writing or electronic delivery. The disclosures must be provided in a form that can be viewed on paper or a screen. This requirement cannot be satisfied by being provided orally or through a recorded message. Proposed comment 15(e)(1)(ii)-1 clarifies the meaning of this proposed requirement. Proposed comment 7(e)(1)(ii)-2 explains that the disclosures required by proposed § 1041.7(e) may be provided without regard to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

The Bureau is proposing to allow electronic delivery because electronic communications may be more convenient than paper communications for some lenders and consumers. In particular for Section 7 loans that are made online, requiring disclosures in paper form could introduce delay and additional costs into the process of making loans online, without providing appreciable improvements in consumer understanding.

The Bureau seeks comment on the benefits and risks to consumers of providing these disclosures through electronic delivery. The Bureau also seeks comment on whether electronic delivery should only be permitted for loans that are made online. Furthermore, the Bureau seeks comment on whether electronic delivery should be subject to additional requirements, including specific provisions of the E-Sign Act. The Bureau seeks comment on whether lenders should be subject to consumer consent requirements, similar to those in proposed § 1041.15(a)(4), when providing the disclosures electronically. The Bureau also seeks comment on whether it is feasible and appropriate to provide the disclosures by text message or mobile application. The Bureau also seeks comment on situations in which consumers would be provided with a paper notice. The Bureau specifically seeks comment on the burdens of providing these notices through paper and the utility of paper notices to consumers.

7(e)(1)(iii) Retainable

Proposed § 1041.7(e)(1)(iii) would require disclosures mandated by proposed § 1041.7(e) to be provided in a retainable form. Proposed comment 7(e)(1)(iii)-1 explains that electronic disclosures are considered retainable if they are in a format that is capable of being printed, saved, or emailed by the consumer.

The Bureau believes that retainable disclosures are important to aid consumer understanding of the features and restrictions on obtaining a Section 7 loan at the time the consumer seeks the loan and as the consumer potentially progresses through a loan sequence. Requiring that disclosures be provided in this retainable form is consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act to prescribe rules to ensure that the features of a product over the term of the product are fully, accurate and effectively disclosed in a manner that permits consumers to understand the costs, benefits, and risks associated with the product. With retainable disclosures, consumers can review their content following the consummation of a Section 7 loan and during the course of a sequence of multiple Section 7 loans.

The Bureau seeks comment on whether to allow for an exception to the requirement that notices be retainable for text messages and messages within mobile applications and whether other requirements should be placed on electronic delivery methods, such as a requirement that the URL link stay active for a certain period of time or a short notice requirement similar to that required in proposed § 1041.15(c) and (e). The Bureau also seeks comment on whether the notices should warn consumers that they should save or print the full notice given that the URL link will not be maintained indefinitely.

7(e)(1)(iv) Segregation Requirements for Notices

Proposed § 1041.7(e)(1)(iv) would require written, non-electronic notices provided under proposed § 1041.7(e) to be segregated from all other written materials and to contain only the information required by proposed § 1041.7(e), other than information necessary for product identification and branding. Proposed § 1041.7(e)(1)(iv) would require that electronic notices not have any additional content displayed above or below the content required by proposed § 1041.7(e), other than information necessary for product identification, branding, and navigation. Lenders would not be allowed to include additional substantive information in the notice. Proposed comment 7(e)(1)(iv)-1 explains how segregated additional content can be provided to a consumer.

In order to increase the likelihood that consumers would notice and read the written and electronic disclosures required by proposed § 1041.7(e), the Bureau is proposing that the notices be provided in a stand-alone format that is segregated from other lender communications. This requirement would ensure that the disclosure contents are effectively disclosed to consumers, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act. The Bureau believes that the addition of other items or the attachment of other documents could dilute the informational value of the required content by distracting consumers or overwhelming them with extraneous information.

The Bureau seeks comment on the proposed segregation requirements for notices, including whether they provide enough specificity. The Bureau also seeks comment on whether and how lenders currently segregate separate disclosures required under Federal or State law.

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[646] Regulation E, 12 CFR 1005.31.

7(e)(1)(v) Machine Readable Text in Notices Provided Through Electronic Delivery

Proposed § 1041.7(e)(1)(v) would require, if provided through electronic delivery, that the notices required by paragraphs (e)(2)(i) and (ii) must be in machine readable text that is accessible via both Web browsers and screen readers. Graphical representations of textual content cannot be accessed by assistive technology used by the blind and visually impaired. The Bureau believes that providing the electronically-delivered disclosures with machine readable text, rather than as a graphic image file, would help ensure that consumers with a variety of electronic devices and consumers that utilize screen readers, such as consumers with disabilities, can access the disclosure information.

The Bureau seeks comment on this requirement, including its benefits to consumers, the burden it would impose on lenders, and on how lenders currently format content delivered through a Web page.

7(e)(1)(vi) Model Forms

Proposed § 1041.7(e)(3) would require the notices under proposed § 1041.7(e)(2) to be substantially similar to the proposed Model Forms A-1 and A-2 in appendix A. Proposed comment 7(e)(1)(vi)-1 explains the safe harbor provided by the model forms, providing that although the use of the model forms and clauses is not required, lenders using them would be deemed to be in compliance with the disclosure requirement with respect to such model forms.

The Bureau seeks comment on the content and form of the proposed Model Forms A-1 and A-2 in appendix A.

7(e)(1)(vi)(A) First Loan Notice

Proposed § 1041.7(e)(2)(i) would require the notice under proposed § 1041.7(e)(2)(i) to be substantially similar to the proposed Model Form A-1 in appendix A.

Proposed Model Form A-1 was tested in two rounds.[647] In Round 1, nearly all participants understood that this notice sought to inform them that subsequent Section 7 loans would have to be smaller than the first loan. For Round 2, the "30 days" language was rephrased and the "loan date" column in the table and the two line items for consumer initials were removed. Round 2 had results similar to Round 1. Participants understood the table listing maximum loan amounts and recognized that the notice sought to inform them that subsequent Section 7 loans would have to be smaller. Proposed Model Form A-1 is the notice tested in Round 2.

7(e)(1)(vi)(B) Third Loan Notice

Proposed § 1041.7(e)(2)(ii) would require the notice under proposed § 1041.7(e)(2)(ii) to be substantially similar to the proposed Model Form A-2 in appendix A.

Proposed Model Form A-2 was tested in one round.[648] The majority of participants understood that they would not be allowed to take a fourth Section 7 loan for 30 days after the third Section 7 loan was repaid. Proposed Model Form A-2 is largely identical to the notice tested in Round 1 but has a few important differences. The prohibition on subsequent loan statement now refers to "a similar loan" instead of a "loan like this one" and "at least 30 days" instead of just "30 days." It also no longer has the two line items for consumer initials.

7(e)(1)(vii) Foreign Language Disclosures

Proposed § 1041.7(e)(1)(vii) would allow lenders to provide the disclosures required by proposed § 1041.7(e) in a foreign language, provided that the disclosures must be made available in English upon the consumer's request.

The Bureau believes that, if a lender offers or services covered loans to a group of consumers in a foreign language, the lender should, at least, be allowed to provide disclosures that would be required under proposed § 1041.7(e) to those consumers in that language, so long as the lender also makes an English-language version available upon request from the consumer. This option would allow lenders to more effectively inform consumers who have limited or no proficiency in English of the risks of and restrictions on taking Section 7 loans.

The Bureau seeks comment in general on this foreign language requirement, including whether lenders should be required to obtain written consumer consent before providing the disclosures in proposed § 1041.7(e) in a language other than English and whether lenders should be required to provide the disclosure in English along with the foreign language disclosure. The Bureau also seeks comment on whether there are any circumstances in which lenders should be required to provide the disclosures in a foreign language and, if so, what circumstance should trigger such a requirement.

7(e)(2) Notice Requirements

Proposed § 1041.7(e)(2) would require a lender to provide notices to a consumer before making a first and third loan in a sequence of Section 7 loans. Proposed § 1041.7(e)(2)(i) would require a lender before making the first loan in a sequence of Section 7 loans to provide a notice that warns the consumer not to take the loan if the consumer will be unable to repay the loan by the contractual due date and informs the consumer of the Federal restrictions on the maximum number of and maximum loan amount on subsequent Section 7 loans in a sequence. Proposed § 1041.7(e)(2)(ii) would require a lender before making the third loan in a sequence of Section 7 loans to provide a notice that informs the consumer that the consumer will not be able to take another similar loan for at least 30 days. More generally, these proposed notices would help consumers understand the availability of Section 7 loans in the near future.

7(e)(2)(i) First Loan Notice

Proposed § 1041.7(e)(2)(i) would require a lender before making the first loan in a sequence of Section 7 loans to provide a notice that warns the consumer of the risk of an unaffordable Section 7 loan and informs the consumer of the Federal restrictions governing subsequent Section 7 loans. Specifically, the proposed notice would warn the consumer not to take the loan if the consumer is unsure whether the consumer can repay the loan amount, which would include the principal and the finance charge, by the contractual due date. In addition, the proposed notice would inform the consumer, in text and tabular form, of the Federally required restriction, as applicable, on the number of subsequent loans and their respective amounts in a sequence of Section 7 loans. The proposed notice would have to contain the identifying statement "Notice of restrictions on future loans," using that phrase. The other language in the proposed notice would have to be substantially similar to the language provided in proposed Model Form A-1 in appendix A. Proposed comment 7(e)(2)(i)-1 explains the "as applicable" standard for information and statements in the proposed notice. It states that, under § 1041.7(e)(2)(i), a lender would have to modify the notice when a consumer is not eligible for a sequence of three covered short-term loans under proposed § 1041.7.

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[647] *See FMG Report*, at 11-14, 40-41.

[648] *See FMG Report*, at 14-15.

The Bureau believes the proposed notice would ensure that certain features of Section 7 loan are fully, accurately, and effectively disclosed to consumers in a manner that permits them to understand certain costs, benefits, and risks of such loans. Given that the restrictions on obtaining covered short-term loans under proposed § 1041.7 would be new and conceptually unfamiliar to many consumers, the Bureau believes that disclosing them is critical to ensuring that consumers understand the restriction on the number of and principal amount on subsequent loans in a sequence of Section 7 loans. The Bureau's consumer testing of the notice under proposed § 1041.7(e)(2)(i) indicated that it aided consumer understanding of the proposed requirements on Section 7 loans.[649] In contrast, the consumer testing of notices for covered short-term loans made under § 1041.5 indicated that these notices did not improve consumer understanding of the ability-to-repay requirements under proposed §§ 1041.5 and 1041.6.[650] Since the notice under proposed § 1041.7(e)(2)(i) would be provided in retainable form, the Bureau believes that the incremental informational value of providing the same or similar notice before the consummation of the second loan in a sequence of Section 7 loans would be limited.

The Bureau seeks comment on the content of the notice under proposed § 1041.7(e)(2)(i) and whether the addition or deletion of any items would aid consumer understanding of the risks of and the restrictions on taking a Section 7 loan. The Bureau also seeks comment on whether a lender should be required to provide the notice under proposed § 1041.7(e)(2)(i) before making a second loan in a sequence of Section 7 loans. Furthermore, consistent with the Small Business Review Panel recommendation, the Bureau seeks comment on ways to streamline information in the proposed notice and on methods of delivering the notice in a way that would reduce the burden on small lenders.[651]

7(e)(2)(ii) Third Loan Notice

Proposed § 1041.7(e)(2)(ii) would require a lender before making the third loan in a sequence of Section 7 loans to provide a notice that informs a consumer of the restrictions on the new and subsequent loans. Specifically, the proposed notice would state that the new Section 7 loan must be smaller than the consumer's prior two loans and that the consumer cannot take another similar loan for at least another 30 days after repaying the new loan. The language in this proposed notice must be substantially similar to the language provided in proposed Model Form A-2 in appendix A. The proposed notice would have to contain the identifying statement "Notice of borrowing limits on this loan and future loans," using that phrase. The other language in this proposed notice would have to be substantially similar to the language provided in proposed Model Form A-2 in appendix A.

The Bureau believes the proposed notice is necessary to ensure that the restrictions on taking Section 7 loans are fully, accurately, and effectively disclosed to consumers. Since several weeks or more may have elapsed since a consumer received the notice under proposed § 1041.7(e)(2)(i), this proposed notice would remind consumers of the prohibition on taking another similar loan for at least the next 30 days. Importantly, it would present this restriction more prominently than it is presented in the notice under proposed § 1041.7(e)(2)(i). The Bureau's consumer testing of the notice under proposed § 1041.7(e)(2)(ii) indicated that it aided consumer understanding of the prohibition on taking a subsequent Section 7 loan.[652]

The Bureau seeks comment on the informational benefits of the proposed notice for the third loan in a sequence of Section 7 loans. The Bureau seeks comment on the content of the notice under proposed § 1041.7(e)(2)(ii) and whether the addition or deletion of any items would aid consumer understanding of the restrictions attached to taking a Section 7 loan. Furthermore, consistent with the Small Business Review Panel recommendation, the Bureau seeks comment on ways to streamline information in the proposed notice and on methods of delivering the notice in a way that would reduce the burden on small lenders.[653]

7(e)(3) Timing

Proposed § 1041.7(e)(3) would require a lender to provide the notices required under proposed § 1041.7(e)(2)(i) and 1041.7(e)(2)(ii) before the consummation of a loan. Proposed comment 7(e)(3)-1 explains that a lender can provide the proposed notices after a consumer has completed a loan application but before the consumer has signed the loan agreement. It further clarifies that a lender would not have to provide the notices to a consumer who merely inquires about a Section 7 loan but does not complete an application for this type of loan. Proposed comment 7(e)(3)-2 states that a lender must provide electronic notices, to the extent permitted by § 1041.7(e)(1)(ii), to the consumer before a Section 7 loan is consummated. It also offers an example of an electronic notice that would satisfy the timing requirement.

The Bureau believes that it is important for consumers to receive the proposed notices before they are contractually obligated on a Section 7 loan. By receiving the proposed notices before consummation, a consumer can make a more fully informed decision, with an awareness of the restrictions on the current loan and on additional Section 7 or similar loans in the near future. The Bureau believes that some consumers, when informed of the restrictions on taking subsequent loans in a sequence of Section 7 loans, may opt not to take the loan. If the proposed notices were provided after the loan has been consummated, however, consumers would be unable to use this information in deciding whether to obtain a Section 7 loan.

The Bureau seeks comment on the timing requirement under proposed § 1041.7(e)(3) and specifically whether the notices under proposed § 1041.7(e) should be provided earlier or later in the process of a consumer seeking and obtaining a Section 7 loan.

Subpart C—Longer-Term Loans

While Subpart B generally covers loans with a duration 45 days or less because of the unique risks to consumers posed by loans of such short duration, Subpart C addresses a subset of longer-term loans: Specifically, loans which are high priced (*i.e.,* with an all-in cost of credit greater than 36 percent) and which are backed either by a leveraged payment mechanism or by vehicle security. As discussed above, the Bureau's focus on loans with a duration of 45 days or less is driven by a concern that for the liquidity-constrained consumers who find it necessary to seek such loans in the first place, such an accelerated repayment period makes it particularly likely that payments will exceed consumers' ability to repay. And when payments exceed a consumer's ability to repay, the consumer is likely to suffer very substantial harms, as described above. The Bureau observes that the characteristics of the longer-term loans addressed in this Subpart C also present a high risk that the loan payments will exceed the consumer's ability to repay and, in addition, then exacerbate the harms that consumers suffer when the payments are unaffordable. Accordingly, in proposed § 1041.8, the Bureau proposes to identify an unfair and abusive act or practice with respect to the making of such covered longer-term loans. In the Bureau's view, it appears to be both unfair and abusive for a lender to make such a loan without reasonably determining that the consumer has the ability to repay the loan. To avoid engaging in this unfair and abusive act or practice, a lender would have to reasonably determine that the consumer has the ability to repay the loan.

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[649] In Round 1 of consumer testing of the notice under proposed § 1041.7(e)(2)(i), "[n]early all participants who saw this notice understood that it was attempting to convey that each successive loan they took out after the first in this series had to be smaller than the last, and that after taking out three loans they would not be able to take out another for 30 days." *FMG Report,* at 11. In Round 2 of consumer testing of the notice under proposed § 1041.7(e)(2)(i), "participants . . . noticed and understood the schedule detailing maximum borrowable amounts, and the schedule appeared to influence their responses when asked about the form's purpose." *Id.,* at 40.

[650] *FMG Report,* at 9-11, 38-39.

[651] *Small Business Review Panel Report,* at 32.

[652] In Round 1 of consumer testing of the notice under proposed § 1041.7(e)(2)(ii), "[t]he majority of participants who viewed this notice understood it, acknowledging that it would not be possible to refinance or roll over the full amount of the third loan they had taken out, and that they would have to wait until 30 days after it was paid off to be considered for another similar loan." *FMG Report,* at 14-15. The notice under proposed § 1041.7(e)(2)(ii) was not tested in Round 2.

[653] *Small Business Review Panel Report,* at 32.

Proposed §§ 1041.9 and 1041.10 would establish a set of requirements to prevent the unlawful practice by requiring the lender to reasonably determine that the consumer has the ability to repay the loan. The Bureau is proposing the ability-to-repay requirements under its authority to prescribe rules identifying as unlawful unfair, deceptive, or abusive acts or practices and in such rules to include requirements for the purpose of preventing such acts or practices.[654] Proposed §§ 1041.11 and 1041.12 would rely on section 1022(b)(3) of the Dodd-Frank Act to exempt certain covered longer-term loans from the ability-to-repay requirements in proposed §§ 1041.9 and 1041.10, as well as the prohibition in § 1041.8. Accordingly, lenders seeking to make covered longer-term loans would have the choice, on a case by case basis, either to follow proposed §§ 1041.9 and 1041.10, proposed § 1041.11, or proposed § 1041.12.

The predicate for the proposed identification of an unfair and abusive act or practice in proposed § 1041.8—and thus for the prevention requirements contained in proposed §§ 1041.9 and 1041.10—is a set of preliminary findings with respect to the consumers who use covered longer-term loans, and the impact on those consumers of the practice of making such loans without assessing the consumers' ability to repay. Those preliminary findings are set forth in the discussion below, hereinafter referred to as Market Concerns—Longer-Term Loans. After laying out these preliminary findings, the Bureau sets forth its reasons for proposing to identify as unfair and abusive the act or practice described in proposed § 1041.8. The Bureau seeks comment on all aspects of this subpart, including the intersection of the proposed interventions with existing State, tribal, and local laws and whether additional or alternative protections should be considered to address the core harms discussed below.

Market Concerns—Longer-Term Loans

a. Overview

As discussed in part II.C, beginning in the 1990s, a number of States created carve-outs from their usury laws to permit single-payment payday loans at annualized rates of between 300 and 400 percent. In these States, such payday loans became the dominant lending product marketed to consumers who are facing liquidity shortfalls and have difficulty accessing the mainstream credit system.

More recently, especially with the advent of the internet, a number of lenders—including online lenders purporting to operate outside of the confines of State law—have introduced newer forms of liquidity loans. These include "hybrid payday loans," which are high-cost loans with full repayment nominally due within a short period of time, but where rollover occurs automatically unless the consumer takes affirmative action to pay off the loan, thus effectively creating a series of interest-only payments followed by a final balloon payment of the principal amount and an additional fee. These newer forms of liquidity loans also include "payday installment loans," which are high-cost installment loans where each succeeding payment is timed to coincide with the consumer's next inflow of cash and generally is automatically deducted from the consumer's bank account as the cash is received. Two States have expressly authorized payday installment loans and in other States the laws leave room for such loans. In these States, licensed storefront payday lenders have taken to making payday installment loans as well. Similarly, a number of States authorize vehicle title installment loans and in those States storefront title lenders are also making vehicle title installment loans.

Additional new forms of liquidity loans have developed in order to fall outside of the scope of existing regulatory regimes that applied narrowly to loans with particular durations or loan features. For example, some lenders developed high-cost, 92-day loans to avoid the usury cap for loans made to members of the armed forces and their dependents under the Military Lending Act, which previously applied to certain closed-end payday loans with durations of 91 days or less. Similarly, lenders have developed high-cost open-end credit products to avoid coverage of State regulatory regimes that apply only to closed-end loans.

Some payday installment loans and vehicle title loans include a built-in balloon payment, typically as the final payment due following a series of smaller (often interest-only) payments, requiring the principal to be repaid in full at one time. Unsurprisingly, consumers find making such a payment as challenging as making the single-payment under a traditional, two-week payday loan, and such loans frequently result in default or reborrowing. But even fully amortizing payday installment and vehicle installment loans, when made without regard to the consumer's ability to repay, are as capable of producing unaffordable payments as short-term loans and, as discussed below, can produce very substantial harms when combined with high cost and leveraged payment mechanisms or vehicle security.

The Bureau preliminarily believes that consumers are adversely affected by the practice of making these loans without making a reasonable determination that the borrowers obtaining the loans can afford to repay the loan while paying for major financial obligations and basic living expenses. Many lenders who make these loans have developed business models, loan structures, and pricing to permit them to make loans profitably even when very large shares of borrowers default. The Bureau also is concerned that if the Bureau regulated only covered short-term loans and did not also address longer term loans, lenders would further accelerate their gravitation toward hybrid payday loans, payday installment loans, and auto title installment loans, thereby continuing to cause similar harms as those caused by covered short-term loans.

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[654] 12 U.S.C. 5531(b).

As discussed more fully in the section-by-section analysis of proposed § 1041.2, the Bureau is proposing to define "covered longer-term loan" to mean loans with a term greater than 45 days for which the lender charges an all-in cost greater than 36 percent and also takes access to the consumer's account or vehicle security. The Bureau recognizes that, in addition to capturing payday installment loans and vehicle title installment loans, this definition also will cover some longer-term installment loans that are made on the basis of an assessment of the consumer's ability to repay, and where, for example, the lender obtains repayment from the borrower's account as a convenience to the borrower as not as an alternative to careful underwriting.[655] The Bureau does not believe that the requirements contained in proposed § 1041.9, coupled with the exemptions contained in proposed §§ 1041.11 and 1042.12, will have a substantial impact on the making of these loans.

Accordingly, this section focuses specifically on hybrid payday, payday installment, and vehicle title installment loans—loans that are not subject to a meaningful assessment of borrowers' ability to repay. It reviews the available evidence with respect to the demographics of consumers who use these loans, their reasons for doing so, and the outcomes they experience. It also reviews the lender practices that cause these outcomes. In brief, the Bureau preliminarily finds:

- *Lower-income, lower-savings consumers in financial difficulty.* While there is less research available about the consumers who use these products as compared to the short-term products addressed in subpart B, available information suggests that consumers who use hybrid payday, payday installment, and vehicle title installment loans also tend to come from lower or moderate income households, have little savings or available credit, and have been turned away from other credit products. Their reasons for borrowing and use of loan proceeds are also generally consistent with short-term borrowers.
- *Ability-to-collect business models.* Lenders have built their business model on an "ability to collect," rather than the consumers' ability to repay the loans. Specifically, lenders generally screen for fraud risk but do not consider consumers' expenses to determine whether a loan is tailored to what the consumers can actually afford. Lenders rely heavily on pricing structures and on leverage over the consumer's bank account or vehicle title to protect their own interests even when loans prove unaffordable for consumers. This leverage helps ensure that lenders continue receiving payments even when the consumer is then left unable to meet her other obligations and expenses.
- *Payment structures.* At least with regard to loans that are structured to include large one-time balloon payments, both costly refinancing and increased defaults are a concern. In data from one lender analyzed by the Bureau, about 60 percent of balloon-payment installment loans result in default or refinancing.
- *Very high default rates.* Borrowers experience very high levels of delinquency and default—in some cases the default rate is over 50 percent at the loan sequence level. Prior to reaching the point of default, borrowers are exposed to a variety of harms that are substantially increased in magnitude because of the leveraged payment mechanism or vehicle security relative to similar loans without these features. For example, delinquencies and defaults on loans with leveraged payment mechanisms can lead to multiple NSF fees and multiple lender returned item fees and late fees. And defaulting on a vehicle title loan carries with it the risk of having the vehicle repossessed, which not only leads to the loss of a valuable asset but can also disrupt consumers' lives and put at risk their ability to remain employed.
- *Reborrowing.* The combination of leveraged payment mechanism or vehicle title with an unaffordable payment can induce the consumer to have to reborrow, when extraction of the unaffordable loan payment leaves, or would leave, consumers with insufficient funds for other expenses. This outcome is prevalent with longer-term loans that include a balloon payment.
- *Consumers lose control of their finances.* In addition to the harms that result from default, lender use of leveraged payment mechanisms can reduce borrowers' control over their own funds by essentially prioritizing repayment of the loan over payment of the borrower's other important obligations and expenses, which can result in late fees under those obligations and other negative consequences, such as cut-off of utilities. As a practical matter, borrowers' loss of control of their own funds also may occur with vehicle title loans, given the importance to consumers of protecting their vehicle ownership.
- *Consumers do not understand the risks.* There is strong reason to believe that borrowers do not fully understand or anticipate these impacts in deciding to take out these loans, including both the extraordinarily high likelihood of default and the degree of collateral damage that can occur in connection with unaffordable loans due to the impact on their ability to maintain control over their own funds and accounts and to prioritize their expenditures.

The following discussion reviews the evidence underlying each of these preliminary findings.

b. Borrower Characteristics and Circumstances of Borrowing

Standalone data specifically about payday installment and vehicle title installment borrowers is less robust than for borrowers of the short-term products discussed in subpart B. However, a number of sources provide combined data for both categories. Both the unique and combined sources suggest that borrowers in these markets generally have low-to-moderate incomes and poor credit histories. Their reasons for borrowing and use of loan proceeds are also generally consistent with short-term borrowers.

1. Borrower Characteristics

As described in Market Concerns—Short-Term Loans, typical payday borrowers have low average incomes ($25,000 to $30,000), poor credit histories, and have often repeatedly sought credit in the months leading up to taking out a payday loan.[656] Given the overlap in the set of firms offering these loans, the similar pricing of the products, and certain similarities in the structure of the products (*e.g.*, the high cost and the synchronization of payment due dates with borrowers' paydays or next deposits of income), the Bureau believes that the characteristics and circumstances of payday installment borrowers are likely to be very similar to those of short-term payday borrowers. To the extent there is data available limited to payday installment borrowers, that data confirms this view.

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[655] This is largely true, for example, of community banks and credit unions and also of traditional finance companies, a fraction of whose loans would be covered by the proposed rule. It is also true of some emerging companies that are seeking to use new technology to make affordable loans. The Bureau believes that the rule would have a minimal effect on such lenders because they already engage in substantial underwriting. The Bureau notes that there may be other problematic practices in markets for covered long-term loans that would not be addressed by this rulemaking and is issuing a Request for Information concurrently with this Notice of Proposed Rulemaking to gather information about any such practices.

[656] *2013 FDIC National Survey of Unbanked and Underbanked Households*, at Table D-12a, *Who Borrows, Where They Borrow, and Why* at 35. *See also* Elliehausen, *An analysis of Consumers' Use of Payday Loans* (61percent of borrowers have household income under $40,000); Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap* (2008).

For example, a study of over one million high-cost loans made by four installment lenders, both storefront and online, reported median borrower gross annual income of $35,057.[657] Similarly, administrative data from Colorado and Illinois indicate that 60 percent of the payday installment borrowers in those States have income of $30,000 or below. And a study of online payday installment borrowers using data from a specialty credit reporting agency found a median income of $30,000 and an average Vantage Score of 523; each of these was essentially identical as the levels for storefront payday borrowers and for online payday borrowers.[658]

The information about vehicle title borrowers that the Bureau has reviewed does not distinguish between single-payment and installment vehicle title borrowers. For the same reasons that the Bureau believes the demographic data with respect to short-term payday borrowers can be extrapolated to payday installment borrowers, the Bureau also believes that the demographic data is likely similar as between short-term vehicle title borrowers and vehicle title installment borrowers. As discussed in Market Concerns—Short-Term Loans, vehicle-title borrowers across all categories tend to be low- or moderate-income, with 56 percent having reported incomes below $30,000, and are disproportionately racial and ethnic minorities and disproportionately members of female-headed households.[659]

2. Circumstances of Borrowing

Similar to the data availability regarding customer demographics, there is less data available that focuses specifically on the circumstances of borrowing for users of payday installment and vehicle title installment loans relative to short-term products. In addition, as discussed in Market Concerns—Short-term Loans, the data must be approached with some caution given that studies that attempt to examine why consumers took out liquidity loans or for what purpose they used the loan proceeds face a number of challenges. Any survey that asks about past behavior or events runs the risk of recall errors, and the fungibility of money makes this question more complicated. For example, a consumer who has an unexpected expense may not feel the full effect until weeks later, depending on the timing of the unexpected expense relative to other expenses and the receipt of income. In that circumstance, a borrower may say that she took out the loan because of an emergency, or say that the loan was taken out to cover regular expenses.

A 2012 survey of over 1,100 users of alternative small dollar credit products asked borrowers separately about what precipitated the loan and what they used the loan proceeds for.[660] Responses were reported for "very short term" and "short term" credit; "short term" referred to non-bank installment loans and vehicle title loans.[661] The most common reason borrowers gave for taking out "short term" credit (approximately 36 percent of respondents) was "I had a bill for an unexpected expense (*e.g.,* medical emergency, car broke down)." About 23 percent of respondents said "I had a payment due before my paycheck arrived," which the authors of the report on the survey results interpret as a mismatch in the timing of income and expenses, and a similar number said that their general living expenses are consistently more than their income. The use of funds most commonly identified was to pay for routine expenses, with nearly 30 percent reporting "pay utility bills" and about 20 percent reporting "general living expenses," but about 25 percent said the use of the money was "car-related," either purchase or repair. In contrast, participants who took out "very short term" products such as payday and deposit advance products were somewhat more likely to cite "I had a bill or payment due before my paycheck arrived" or that their general living expenses were consistently more than income than respondents who took out "short term" products, though unexpected expenses were also cited by about 30 percent of the "very short term" respondents. More than 40 percent of "very short term" respondents also reported using the funds to pay for routine expenses, including both paying utility bills and general living expenses.

c. Lender Practices

Many lenders making hybrid payday, payday installment, and auto title installment loans have constructed business models that allow them to profitably offer loans despite very high loan-level and sequence-level default rates. Rather than assessing whether borrowers will have the ability to repay the loans, these lenders rely heavily on loan features and practices that result in consumers continuing to make payments beyond the point at which they are affordable. Some of these consumers may repay the entire loan at the expense of suffering adverse consequences in their ability to keep up with other obligations or meet basic living expenses. Others end up defaulting on their installment loans at a point later than would otherwise be the case, thus allowing the lenders to extract additional revenue. The features that make this possible include the ability to withdraw payments directly from borrowers' deposit account or source of income, and the leverage that comes from the ability to repossess the borrower's means of transportation to work and other activities. When these features are combined with the high cost of the loans and, in some cases, a balloon payment structure or the ability to recover additional money through repossessing and selling borrowers' vehicles, there are lenders that operate, presumably at a profit, even when borrowers are defaulting on 50 percent of loan sequences.

1. Failure to Assess ATR

As discussed part II.C, lenders that make payday installment and longer-term vehicle title loans generally gather some basic information about borrowers before making a loan. They normally collect income information, although that in some cases is limited to be self-reported or "stated" income. Payday installment lenders collect information to ensure the borrower has a checking account, and vehicle title lenders collect information about the vehicle that will provide the security for the loan. Some lenders access specialty consumer reporting agencies and engage in sophisticated screening of applicants, and at least some lenders turn down the majority of applicants to whom they have not previously lent.

The primary purposes of this screening, however, is to avoid fraud and other "first payment defaults," *not* to ensure that borrowers have the ability to make all the required payments on the loans. These lenders generally do not obtain information about the borrower's existing obligations or living expenses and do not prevent those with expenses chronically exceeding income from taking on additional obligations in the form of payday installment or similar loans. Lending to borrowers who cannot repay their loans would generally not be profitable in a traditional lending market, but the features of these loans—leveraged payment mechanisms, vehicle security, and high cost—turn the traditional model on its head. These features significantly reduce lenders' interest in ensuring that payments under an offered covered longer-term loan are within a consumer's ability to repay.

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[657] Howard Beales & Anand Goel, *Small Dollar Installment Loans: An Empirical Analysis,* at Table 1 (March 20, 2015), *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581667.*

[658] NonPrime 101, Report 8, *Can Storefront Payday Borrowers Become Installment Loan Borrowers? Can Storefront Payday Lenders Become Installment Lenders?* at 5 (credit scores), 7 (incomes) (December 2015).

[659] *2013 FDIC National Survey of Unbanked and Underbanked Households,* at Table D-12a., Pew; *Auto Title Loans: Market Practices and Borrowers' Experiences;* Fritzdixon, *et al.,* at 1029-1030.

[660] Rob Levy & Joshua Sledge, Ctr. for Fin. Servs. Innovation, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers* (2012).

[661] "Very short term" referred to payday, pawn, and deposit advance products offered by depository institutions. Rob Levy & Joshua Sledge, Ctr. for Fin. Servs. Innovation, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers,* at 4 (2012).

Leveraged repayment mechanisms and vehicle security significantly reduce lenders' interest in ensuring that payments under an offered covered longer-term loan are within a consumer's ability to repay. With these features, the lender's risk of default is reduced and delayed, even if loan payments ultimately and significantly exceed the consumer's ability to repay. The effect is especially strong when—as is typically the case for payday installment loans—such a lender times the loan payments so that they coincide with deposits of the consumer's periodic income into the account, or has secured the ability to take payments directly from the borrower's paycheck via wage assignment or similar mechanism. In these cases, lenders can succeed in extracting payments from the consumer's account even if the payments are not affordable to the consumer. The lender's risk of default is reduced, and the point at which default ultimately occurs, if ever, is delayed. As a result, the lender's incentive to invest time or effort into determining whether the consumer will have the ability to make the loan payments is greatly diminished.

Vehicle security loans provide a lender with the ability to repossess and sell a consumer's automobile, which often is essential for a consumer to be able to work and earn income. Given the dire consequences of repossession, a consumer is likely to prioritize loan payments under an auto title loan over almost all other financial obligations, even if it greatly exceeds the consumer's ability to repay, making it likely that the lender will receive its payment. Indeed, through exercise of its statutory functions, the Bureau is aware of an auto title lender that based its lending decisions, not on consumers' ability to repay, but in part on consumers' "pride of ownership" in the vehicle, suggesting that vehicle security functioned to make the consumer prioritize loan payment over other expenses even if it was unaffordable to the consumer.

The high-cost feature of covered longer-term loans also greatly reduces the lender's incentive to determine whether a loan payment is within the consumer's ability to repay. When a loan has a high total cost of credit, the total revenue to the lender, relative to the loan principal, enables the lender to profit from a loan, even if the consumer ultimately defaults on the loan. For example, for a $1,000, 12-month loan with a 300 percent interest rate and typical amortization, a lender would typically have received $1,608 after only six months. Moreover, even if defaulted loans are not themselves profitable, lenders can weather such losses when the performing loans are generating such high returns.

As a result, the lender has substantially less incentive to conduct a careful analysis of whether the loan payment will exceed the consumer's ability to repay over the term of the loan and ultimately drive the consumer to default, so long as the consumer has enough income that can be extracted from the consumer by means of a leveraged payment mechanism or vehicle title.

2. Pricing structure

Because loan losses are so high in the absence of underwriting for affordability, lenders structure these loans with very high financing costs to ensure profitability. Lenders can thus earn very high returns on the (sometimes minority of) loans that are repaid in full. They also receive substantial amounts in the early months of a loan from many consumers who do ultimately default. Most borrowers who default make some payments first, and because the costs on these loans are so high many of these borrowers actually pay back more than they initially borrowed despite ultimately defaulting on the loan. As discussed in the example above, for a $1,000, 12-month loan with a 300 percent interest rate, a lender would typically have received $1,608 after only six months.

3. Leveraged Payment Mechanisms and Vehicle Security

Lenders also rely heavily on mechanisms that increase their "ability to collect" these expensive payments even if the loan proves ultimately unaffordable for the consumer. In particular, lenders' ability to withdraw payments from borrowers' deposit accounts, and to time those payments to borrowers' receipt of income, increases the likelihood that borrowers will repay, regardless of whether a payment is affordable.

As discussed in part II and in Market Concerns—Presentments, payday installment lenders—particularly those who operate online—are often extremely aggressive in the ways in which they obtain authorization to withdraw funds from consumers' accounts at origination. Under EFTA lenders cannot condition credit on obtaining an authorization from the consumer for "preauthorized" (recurring) electronic fund transfers,[662] but this limitation does not apply to post-dated paper checks or one-time electronic fund transfers. Many lenders often take authorization for multiple payment methods, such as taking a post-dated check along with the consumer's debit card information or for two forms of EFT. Lenders often make alternatives to preauthorized EFTs significantly more burdensome, for instance by requiring special origination procedures, increasing APRs, or delaying the disbursement of loan proceeds if the consumer selects an alternative rather than permitting preauthorized EFTs.[663]

Moreover, as discussed in part II and in Market Concerns—Presentments, it is often not feasible for consumers to prevent lenders from collecting payment from their accounts once the authorizations are granted. Revoking authorizations or instructing the consumer's depository institution to stop payment can be logistically challenging and involve substantial fees and may in any event prove unsuccessful. Accordingly, in order to stop lenders from withdrawing (or attempting to withdraw) funds, borrowers may have to cease depositing funds into their account (and possibly close their accounts) or remove funds quickly enough that lenders are unable to access them. Absent such action, consumers may find themselves short of money for basic living expenses or other financial obligations, and may find themselves facing substantial increases in account and loan fees if the lender's payment collection attempts are paid through overdraft services or trigger returned payments.

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[662] *See* 12 CFR 1005.10(e)(1).

[663] Although, as noted above, the EFTA and Regulation E prohibit lenders from conditioning credit on a consumer "preauthorizing" recurring electronic fund transfers, in practice online payday and payday installment lenders are able to obtain such authorizations from consumers for almost all loans through various methods. Lenders are able to convince many consumers that advance authorizations will be more convenient, and some use direct incentives such as by making alternative methods of payment more burdensome, changing APRs, or providing slower means of access to loan proceeds for loans without preauthorized withdrawals. The Bureau is not addressing in this rulemaking the question of whether any of the practices described are consistent with the EFTA and Regulation E.

Similarly, the practical leverage that comes with a security interest in the consumer's transportation, and the attendant threat of repossession, can prompt consumers to prioritize vehicle title loans above basic living expenses and other financial obligations. As discussed above in part II.C, some lenders further increase this leverage by installing devices on consumers' cars that allow the cars to be shut off remotely in the event of non-payment. Particularly in areas in which the consumer relies heavily on their car for transportation to get to work, access health care, or conduct other basic daily activities, the threat of repossession can be extremely powerful. As discussed above in Part II.B, one or more lenders exceed their maximum loan amount guidelines and consider a consumer's "pride of ownership," or vehicle's sentimental or use value to the borrower, when assessing the amount of funds they will lend.

d. Patterns of Lending and Severity of Delinquency & Default Harms

The circumstances of the borrowers, the structure of the loans, and the practices of the lenders together lead to dramatic negative outcomes for many payday installment and vehicle title installment borrowers. The Bureau is particularly concerned about the harms associated with default, including vehicle repossession and the loss of a deposit account; harms associated with reborrowing and refinancing, especially for balloon-payment loans; harms associated with the ability of lenders to directly withdraw funds from the deposit account; and harms that flow from borrowers defaulting on other major obligations or forgoing basic living expenses as a result of making unaffordable payments on such loans.

1. Delinquency and Default

As discussed above, many borrowers, when faced with unaffordable payments, will be late making loan payments and may ultimately cease making payments altogether and default on their loans. The Bureau is concerned that lenders' ability to withdraw funds from consumers' accounts and to exercise their right to repossess consumers' transportation in the case of vehicle title loans often cause consumers to continue paying on unaffordable loans long past the point that the consumers might otherwise cease making payments on the loan. Even with these powerful mechanisms for extracting payments, however, a very substantial number of borrowers eventually default on their non-underwritten loans. Default leads to collections and, in the case of vehicle title loans, often to repossession of the borrower's vehicle.[664]

While the Bureau is not aware of any data directly measuring the number of late payments across the industry, the Bureau has analyzed checking account data from 2011 and 2012 and identified borrowers who took out loans from online lenders making high-cost loans that are disbursed and repaid through the ACH system.[665] These data demonstrate high rates of overdrafts and returns for insufficient funds. Over half of borrowers' deposit accounts had at least one payment request that resulted in an overdraft or NSF fee. In either case, the borrower would typically pay a fee to her financial institution, and the median fee was $35. For borrowers who are charged such a fee, the average total charge was $185, and 10 percent were charged a total of at least $432. In addition, the consumer may also be charged fees by the lender.

More data is available as to ultimate default rates. And even with the priority provided by leveraged payment mechanisms and vehicle title, an extremely high number of loans ultimately end in default. Specifically, the Bureau has analyzed data on a number of different payday installment loan products offered by seven non-depository institutions. These unsecured installment loans typically carry triple-digit APRs starting around 200 percent, with payment frequencies generally tied to a borrower's payday or date on which benefits are received and payment obtained through access to the consumer's checking account. The lenders whose data the Bureau has studied typically verify a borrower's identity, income, and bank account information. They may also perform varying degrees of underwriting and obtain information from a specialty credit reporting company, but as discussed above focus primarily on screening out fraud and other first-payment defaults.

The overall loan level default rate across payday installment loan products the Bureau is 24 percent. The default rate on loans originated online is much higher, at 41 percent, while for loans originated through storefronts that rate is 17 percent.[666] Default rates are higher at the sequence level. Many borrowers refinance their loans, usually while taking out new cash. The Bureau also analyzed default rates on sequences of loans, which include initial loans, refinancings, and loans taken out within 30 days of the repayment of a prior loan. The sequence default rate is 38 percent overall, 55 percent for loans originated online, and 34 percent for loans originated in storefronts. For loans originated through either channel, approximately 20 percent of loans that defaulted had no payments made; for 80 percent of defaults the lender was repaid at least in part before the borrower defaulted.[667]

These defaults can cause not only direct harms to consumer with regard to the payday installment loan itself, but also collateral damage by way of the borrower's bank account. As discussed above, default may come after a lender has made repeated attempts to collect payments from the borrower's deposit account, such that a borrower not only faces substantial increased fees from the lender and his or her depository institution, but also may ultimately find it necessary to close the account, or the borrower's bank or credit union may close the account if the balance is driven negative and the borrower is unable for an extended period of time to return the balance to positive. In the Bureau's analysis of checking account data for borrowers who took out loans from online lenders thirty-six percent of borrowers who experienced an unsuccessful attempt by an online payday lender to collect a payment from their account subsequently had their accounts closed involuntarily.[668]

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[664] The Bureau uses the term "default" to refer to borrowers who do not repay their loans, or who repay only after the loan has been charged off by the lender.

[665] *CFPB Online Payday Loan Payments,* at 12. This dataset includes single-payment and installment loans, as well as notionally single-payment loans that automatically renew, but it is not possible to distinguish between these different types of loans and derive separate results for each type.

[666] Colorado's administrative data demonstrates that in 2013, the number of loan defaults on payday installment loans, calculated as a percent of the total number of borrowers, was 38 percent. (State of Colorado, Department of Law, *2014 Deferred Deposit/Payday Lenders Annual Report* [hereinafter 2014 Deferred Deposit/Payday Lenders Annual Report], *available at http://coag.gov/sites/default/files/contentuploads/cp/ConsumerCreditUnit/UCCC/2014_ddl_ar_composite.pdf*; Pew Charitable Trusts, *Trial, Error, and Success in Colorado's Payday Lending Reforms* at 6 (Dec. 2014) *available at http://www.pewtrusts.org/~/media/assets/2014/12/pew_co_payday_law_comparison_dec2014.pdf*; Lauren Saunders, *Colorado Is No Model for a National Payday Rule,* American Banker, (Dec. 10, 2014), available at *http://www.nclc.org/images/pdf/high_cost_small_loans/ab-colorado-no-model-national-payday-rule.pdf.*) Defaults per borrower increased in 2014 to 44 percent. State of Colorado, Department of Law, *2014 Deferred Deposit/Payday Lenders Annual Report.*

[667] An analysis by NonPrime 101 of online installment loans also found loan-level default rates similar to those seen in the data analyzed by the Bureau, even after excluding lenders with extremely high default rates. NonPrime 101, Report 6, *The CFPB Five Percent Solution: Analysis of the Relationship of Payment-to-Income Ratio to Defaults in Online Installment Loans* (September 10, 2015).

The Bureau also found very high rates of default on installment vehicle title loans.[669] In CFPB Report on Supplemental Findings, the Bureau found that the default rate on these loans is 22 percent. When measured at the sequence level, where a sequence includes initial loans, refinancings, and loans that borrowers took out within 30 days of repaying a prior loan, 31 percent of loan sequences ultimately led to a default. The share of defaults where the borrower made no payments prior to defaulting is higher on vehicle title loans, with 32 percent of defaults having no payments made.

Vehicle title lenders have secured the option, in most circumstances, to repossess the vehicle upon default. In the data the Bureau has analyzed, at both the loan and sequence level, approximately 35 percent of defaults led to repossession. That means that 11 percent of loan sequences led to repossession. These rates of repossession are similar to those reported by researchers who gathered data from State regulators. They report a loan-level repossession rate in Idaho in 2011 of just under 10 percent, and a borrower-level default rate (similar to a sequence-level rate) in Texas in 2012 of just under 8 percent.[670]

Repossession can inflict great harm on borrowers. The loss of a vehicle can disrupt people's lives and put at risk their ability to remain employed. The potential impacts of the loss of a vehicle depend on the transportation needs of the borrower's household and the available transportation alternatives. According to two surveys of vehicle title loan borrowers, 15 percent of all borrowers report that they would have no way to get to work or school if they lost their vehicle to repossession.[671] More than one-third (35 percent) of borrowers pledge the title to the only working vehicle in the household (Pew 2015). Even those with a second vehicle or the ability to get rides from friends or take public transportation would presumably experience significant inconvenience or even hardship from the loss of a vehicle.

Borrowers who default on all types of covered longer-term loans are likely to be subject to collection efforts, except where vehicle repossession yields sufficient money to cover the amount owed on the loan. The Bureau has received complaints from borrowers of covered longer-term loans that describe aggressive collections practices that in some cases caused significant psychological and emotional stress and put at risk the consumers' employment. These practices include frequent and repeated phone calls, threats of legal action, repeated contacts with consumers' family members and employers, and even—in some instances—visits to consumers' homes and workplaces.

2. Reborrowing Spurred by Balloon Payment Loan Structures

In CFPB Report on Supplemental Findings, the Bureau analyzed several aspects of refinancing and reborrowing behavior of borrowers taking out vehicle title installment loans. For a longer-term loan with a balloon payment at the end, the data analyzed by the Bureau demonstrated a large increase in borrowing around the time of the balloon payment, relative to loans without a balloon payment feature. Further, for loans with a balloon payment, the reborrowing and refinancing was much more likely to occur around the time that the balloon payment is due and consumers were less likely to take cash out from such refinancings, suggesting that unaffordability of the balloon payment is the primary or sole reason for the reborrowing or refinancing.

Balloon payments were not only associated with a sharp uptick in reborrowing, but also with increased incidence of default. Specifically, about 60 percent of balloon-payment installment loans resulted in refinancing, reborrowing, or default. In contrast, nearly 60 percent of comparable fully-amortizing installment loans were repaid without refinancing or reborrowing. Moreover, the reborrowing often only deepened the consumer's financial distress. The default rate for balloon-payment vehicle title installment loans that the Bureau analyzed was about three times higher than the default rate for comparable fully-amortizing vehicle title installment loans offered by the same lender.

Longer-term loans without balloon repayments also have substantial rates of refinancing, but the dominant pattern appears to be somewhat different than with regard to longer-term loans with balloon payments. In case of longer-term loans without balloon payments, the Bureau's research suggests that most borrowers are withdrawing substantial amounts of cash at the time of the refinancing, and that their payment history prior to the refinancing does not particularly evidence distress.[672] Accordingly, it appears that most refinances for such products involve situations in which consumers are using longer-term installment loans somewhat like a line of credit to take out additional funds before paying back the original loan. This does not mean that the products are ultimately affordable, however, since 38 percent of longer-term loan sequences ultimately end in default.[673] And in individual cases there may still be situations in which consumers who are in distress are pushed into refinancings as a way to forestall default.

3. Collateral Harms From Making Unaffordable Payments

In addition to the harms discussed above, the Bureau is concerned that borrowers who take out these loans may experience other financial hardships as a result of making payments on unaffordable loans. Even if there are sufficient funds in the account, extraction of the payment through leveraged payment mechanisms places control of the timing of the payment with the lender, leading to the risk that the borrower's remaining funds will be insufficient to make payments for other obligations or to meet basic living expenses. Similarly, if a lender has taken a security interest in a borrower's vehicle, the borrower is likely to feel compelled to prioritize payments on the title loan over other bills or crucial expenditures because of the leverage that the threat of repossession gives to the lender. The resulting harms are wide-ranging and, almost by definition, can be quite extreme, including the loss of the consumer's housing, shut-off of utilities, and an inability to provide basic requirements of life for the consumer and any dependents. Consumers may experience knock-on effects from their failure to meet these other obligations, such as additional fees to resume utility services or late fees on other obligations. This risk is further heightened when a lender times the loan payment due dates to coincide with the consumer's receipt of income, which is typically the case with payday installment loans.

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[668] *CFPB Online Payday Loan Payments,* at 23.

[669] For vehicle title loans, default is measured as the loan being charged off and/or the vehicle being repossessed.

[670] Fritzdixon, *et al.* Vehicle title loans in Idaho are 30-day single payment loans, but they can be structured to renew automatically. Texas allows both 30-day single payment and installment loans; the statistic on repossessions in Texas is for all loans.

[671] *Id.;* Pew Charitable Trusts, *Auto Title Loans, Market Practices and Borrower Experiences.*

[672] *CFPB Report on Supplemental Findings,* at ch. 1.

[673] *CFPB Report on Supplemental Findings,* at ch. 1.

Furthermore, even if the consumer's account does not have sufficient funds available to cover the required loan payment, the lender still may be able to collect the payment from the consumer's bank by putting the account into an overdraft position. Where that occurs, the consumer will incur overdraft fees and, at many banks, extended overdraft fees. When new funds are deposited into the account, those funds will go to repay the overdraft and not be available to the consumer to meet her other obligations or basic living expenses. Thus, at least certain types of covered long term loans carry with them a high degree of risk that if the payment proves unaffordable the consumer will still be forced to pay the loan and will incur penalties, such as late fees or shut-off fees on other obligations, or face legal action, such as eviction.

Similarly, with vehicle title loans, borrowers may feel compelled to take extraordinary measures to avoid defaulting on the loans by making a payment at the expense of their ability to meet other obligations. The borrower may forgo paying other significant bills or basic living expenses to avoid repossession of the vehicle.

The Bureau is not able to directly observe the harms borrowers suffer from making unaffordable payments. The presence of a leveraged payment mechanism or vehicle security, however, both make it highly likely that borrowers who are struggling to pay back the loan will suffer these harms. The very high rates of default on these loans means that many borrowers do struggle to repay these loans, and it is therefore reasonable to infer that many borrowers are suffering harms from making unaffordable payments.

Wage assignments represent a particularly extreme form of a lender taking control of a borrower's funds away from a borrower. When wages are assigned to the lender, the lender does not even need to go through the process of submitting a request for payment to the borrower's financial institution; the money is simply forwarded to the lender without ever passing through the borrower's hands. The Bureau is concerned that where loan agreements provide for wage assignments, a lender can continue to obtain payment as long as the consumer receives income, even if the consumer does not have the ability to repay the loan while meeting her major financial obligations and basic living expenses. This concern applies equally to contract provisions that would require the consumer to repay the loan through payroll deductions or deductions from other sources of income, as such provisions would operate in essentially the same way to extract unaffordable payments.

e. Consumer Expectations and Understanding

The Bureau is concerned about these various negative consequences for consumers from payday installment and vehicle title installment loans because there is strong reason to believe that consumers do not understand the high risk that such loans will prove to be unaffordable or the likelihood of particular collateral consequences such as substantial bank fees and risk of account closure.

As an initial matter, the Bureau believes that many consumers do not understand that payday installment and vehicle title installment lenders do not evaluate their ability to repay their loans and instead have built a business model that tolerates default rates well in excess of 30 percent in many cases. While the Bureau is unaware of any surveys of borrowers in these two markets, these two conditions are directly contrary to the practices of lenders in nearly all other credit markets—including other subprime lenders. Consumers are highly unlikely to understand the effects of leveraged payment mechanisms, vehicle security, and high cost on lender incentives and on the probability that loan payment will exceed consumers' ability to repay.

The Bureau believes that most borrowers are unlikely to take out a loan that they expect to default on, and that the fact that at least one in three sequences end in default strongly suggests that borrowers do not understand how much risk they are exposing themselves to with regard to such negative outcomes as default and loss of their vehicle, having to forgo other major financial obligations or living expenses, or reborrowing in connection with unaffordable loans.

Even if consumers did understand that companies offering payday installment loans and vehicle title installment loans were largely disinterested in their ability to repay, consumers would still be handicapped in their ability to anticipate the risks associated with these loans. As discussed above, borrowers taking out these loans are often already in financial distress. Their long-term financial condition is typically very poor, as evidenced by very low credit scores. Many have had a recent unexpected expense, like a car repair, or a drop in income, or are chronically having trouble making ends meet.[674]

As discussed above in Market Concerns—Short-Term Loans, consumers in financial crisis tend be overly focused on their immediate problems and not thinking about the future, even the near future. This phenomenon is referred to as "tunneling," evoking the tunnel-vision decision making that consumers in these situations demonstrate.[675] Even when not facing a crisis, research shows that consumers tend to underestimate their near-term expenditures,[676] and, when estimating how much financial "slack" they will have in the future, discount even the expenditures they do expect to incur.[677] Finally, regardless of their financial situation, research suggests consumers generally may have unrealistic expectations about their future earnings, their future expenses, and their ability to save money to repay future obligations. Research documents that consumers in many contexts demonstrate this "optimism bias." [678] Consumers tend to underestimate that volatility in their own earnings and expenses, especially the risk of unusually low income or high expenses. Such optimism bias tends to have a greater effect the longer the length of time over which consumers are projecting their income expenses. The payday installment loans and vehicle title loans about which the Bureau is concerned typically range in length from a few months to several years.

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[674] Levy & Sledge, at 12.

[675] Sendhil Mullainathan & Eldar Shafir, *Scarcity: The New Science of Having Less and How It Defines Our Lives* (2014).

[676] Gulden Ulkuman, Manoj Thomas & Vicki G. Morwitz, *Will I Spend More in 12 Months or a Year? The Effects of Ease of Estimation and Confidence on Budget Estimates*, 35 Journal of Consumer Research, at 245-256 (2008); Johanna Peetz & Roger Buehler, *Is the A Budget Fallacy? The Role of Savings Goals in the Prediction of Personal Spending*, 35 Personality and Social Psychology Bulletin 1579 (2009); Johanna Peetz & Roger Buehler, *When Distance Pays Off: The Role of Construal Level in Spending Predictions*, 48 Journal of Experimental Social Psychology 395 (2012).

[677] Jonathan Z. Bermann, An T. K. Tran, John G. Lynch, Jr. & Gal Zauberman, *2015 Expense Neglect in Forecasting Personal Finances* (2015).

[678] The original work in the area of optimistic predictions about the future is in the area of predicting how long it will to complete certain tasks in the future. *See*, for example Daniel Kahneman & Amos Tversky, *Intuitive prediction: Biases and corrective procedures*, 12 TIMS Studies in Management Science, at 313-327 (1979); Roger Buehler, Roger, Dale Griffin & Michael Ross, *Exploring the Planning Fallacy: Why People Underestimate their Task Completion Times*, 67 Journal of Personality and Social Psychology, No. 3, at 366-381 (1994); Roger Buehler, Dale Griffin & Michael Ross, *Inside the planning fallacy: The causes and consequences of optimistic time predictions* (2002). In Thomas Gilovich, Dale Griffin & Daniel Kahneman (Eds.), *Heuristics and biases: The psychology of intuitive judgment*, at 250-270 (Cambridge, UK: Cambridge University Press).

Finally, in addition to gaps in consumer expectations about the likelihood that the loans will generally prove unaffordable, the Bureau believes that consumers underestimate the potential damage from default such as secondary fees, loss of vehicle or loss of account. For instance, optimism bias may tend to cause consumers to underestimate degree of harm that could occur if a loan proved unaffordable. Moreover, the Bureau believes that many consumers do not appreciate the degree to which leveraged payment mechanisms can increase the degree of harm from unaffordable loans. As discussed further below in Market Concerns—Payments, payment presentment practices in at least some parts of the industry deviate wildly from other types of lenders and businesses, and are therefore far more likely to trigger multiple NSF and overdraft fees. The Bureau believes that consumers thus do not recognize how much risk of secondary fees and account closure they are taking on with such loans.

Section 1041.8 Identification of Abusive and Unfair Practice—Covered Longer-Term Loans

As discussed above, in most consumer lending markets, it is standard practice for lenders, before making loans, to assess whether would-be borrowers have the ability to repay those loans. In certain markets, Federal law requires this.[679] The Bureau has not determined whether, as a general rule, it is an unfair or abusive practice to make a loan without making such a determination. Nor is the Bureau proposing to resolve that question in this rulemaking.

Rather, the focus of this subpart of the proposal is on a specific set of loans that the Bureau has studied, as discussed in more detail in part II.C and Market Concerns—Longer-Term Loans. Much as with the short-term loans discussed in proposed § 1041.4, above, the Bureau believes that the structure and conditions of these longer-term loans create severe risk to consumers where lenders fail to assess applicants' ability to repay the loans. Specifically, the Bureau is focused on non-underwritten loans that involve: (1) A structure that puts the creditor in a preferred position over other obligations of the consumer; and (2) a high cost. These structural features can take the form of a "leveraged payment mechanism" (that is, an arrangement in which the lender has the ability to extract loan payments directly from the consumer's wages or from the consumer's bank account) or a form of vehicle security that allows the lender to repossess the consumer's automobile in the event of default. Sometimes the structures include balloon payment features, which greatly increase the risk that consumers will need to reborrow to meet other obligations.

Based on the evidence described in part II.C and in Market Concerns—Longer-Term Loans, and pursuant to its authority under section 1031(b) of the Dodd-Frank Act, the Bureau is proposing in § 1041.8 to identify it as both an abusive and an unfair act or practice for a lender to make such a loan (*i.e.*, a covered longer-term loan) without reasonably determining that the consumer has the ability to repay the loan. "Ability to repay" in this context means that the consumer has the ability to repay the loan over its life and according to its terms without reborrowing and while meeting the consumer's major financial obligations and basic living expenses.

As discussed above and further below, the Bureau is proposing to identify this abusive and unfair practice based on its assessment of the evidence regarding hybrid payday, payday installment, and vehicle title installment loans, which generally are made without any genuine attempt to assess the consumer's ability to repay over the life of the loan. The Bureau again notes that its proposed definition for covered longer-term loans would also include some loans made by other types of lenders that engage in varying types of underwriting designed to assess the consumer's repayment ability. The Bureau believes that the proposed definition of covered longer-term loans is warranted to ensure that the rule is not thwarted by superficial evolution in product structures or descriptions. It also believes that adjusting to the proposed rule would not be a heavy burden for such lenders.

The Bureau's preliminary findings with regard to abusiveness and unfairness are discussed separately below. The Bureau is making these preliminary findings based on the evidence discussed in part II.C and Market Concerns—Longer-Term Loans.[680]

a. Abusiveness

Under § 1031(d)(2)(A) and (B) of the Dodd-Frank Act, the Bureau may find an act or practice to be abusive in connection with the provision of a consumer financial product or service if it takes unreasonable advantage of (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service or of (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service. When a lender structures a loan so that it meets the definition of a covered longer-term loan, the loan's structure and conditions greatly exacerbate the risks to the consumer of harm from unaffordable loan payments compared to the risks to consumers from most other types of loans, especially given the characteristics of the consumers to whom such loans are marketed. Based on the evidence and concerns described in part II.C and Market Concerns—Longer-Term Loans, the Bureau believes it may be an abusive act or practice under both section 1031(d)(2)(A) and (B) of the Dodd-Frank Act for a lender to make such a loan, which is defined as a covered longer-term loan in proposed § 1041.3(b)(3), without first making a reasonable determination that the consumer will have the ability to repay the loan according to its terms.

1. Consumers Lack Understanding of Material Risks and Costs

As discussed in Markets Concerns—Longer-Term Loans, hybrid payday, payday installment and vehicle title installment loans can and frequently do lead to a range of negative consequences for consumers, including high levels of default, being unable to pay other obligations or basic living expenses as a result of making unaffordable payments, and in some cases refinancing or reborrowing, especially where, as is true of hybrid payday loans, the loan includes an unaffordable balloon payment. All of these—including the direct costs that may be payable to lenders and the collateral consequences that may flow from the loans—are risks or costs of these loans, as the Bureau understands and reasonably interprets that phrase.

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[679] *See, e.g.*, Dodd-Frank Act section 1411, codified at 15 U.S.C. 1639c(a)(1); CARD Act, 15 U.S.C. 1665e; Higher-Priced Mortgage Loan Rule, 73 FR 44522 at 44543. The Office of the Comptroller of the Currency has, in guidance, underscored the importance of this concept as well. See OCC Advisory Letter 2003-3, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans (Feb. 21, 2003), *available at http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf*; OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 26, 2010); FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2010).

[680] Any references in this discussion to specific evidence are not intended to suggest that the Bureau is relying only on such specific evidence in making the preliminary findings regarding abusiveness and unfairness.

The Bureau recognizes that, as with short-term covered loans, many consumers who take out hybrid payday, payday installment, and vehicle title installment loans understand that they are incurring a debt that must be repaid within a prescribed period of time and that if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences such as being subject to debt collection or, in the case of loans with vehicle security, repossession. But as discussed in connection with the Bureau's preliminary abusiveness finding regarding short-term covered loans, the Bureau does not believe that such a generalized understanding suffices to establish that consumers understand the material costs and risks of these loans. Rather, as previously explained, the Bureau believes that it is reasonable to interpret "understanding" in this context to mean more than mere awareness that it is within the realm of possibility that a particular negative consequence may follow or cost may be incurred as a result of using the product. For example, consumers may not understand that a risk is very likely to happen or that—though relatively rare—the impact of a particular risk would be severe. If consumers are not actually aware of the likelihood and severity of potential consequences of a product at the point in time they must determine whether to use that product, they are particularly vulnerable to lender acts or practices that can take unreasonable advantage of consumers' lack of understanding.

As discussed in Market Concerns—Longer-Term Loans, the defining characteristics of these loans—a leveraged repayment position or vehicle security combined with a high-cost structure—enable lenders to profitably make the loans without engaging in robust underwriting as is done in most other credit markets. These very same characteristics increase the likelihood that consumers will suffer the harms of unaffordable payments and the amount of harm they will experience. The Bureau believes that with respect to covered longer-term loans, consumers generally lack understanding of both the likelihood and the severity of the harms they face.

i. Likelihood of Harm

In most credit markets, lenders' and consumers' interests are normally aligned, so that the success of a lender and a consumer in a transaction is made much more likely by a lender's insistence that loan payments be within the consumer's ability to repay. For that reason, lenders normally engage in underwriting. If the lender determines that payments under a particular prospective loan would exceed a consumer's ability to repay, the lender instead offers a loan with payments that are within the consumer's ability to repay or simply declines to make a loan to that consumer. But in covered longer-term loans markets, lenders find it unnecessary to underwrite, so this beneficial effect for consumer is lacking. The absence of lender underwriting enabled by the two defining characteristics of a covered longer-term loan mean that there is often little or no relationship between the payments under a loan and the financial capacity of the particular consumer who takes the loan. The result is a very high likelihood that a covered longer-term loan will prove to be unaffordable for the consumer who takes it, and thus result in potentially severe harms.

The Bureau believes that consumers taking these loans generally do not understand the counterintuitively high likelihood that loan payments will exceed their ability to repay because of the particular features of these loans, and that they therefore do not understand the magnitude of the risk that they will default, suffer collateral harms from making unaffordable payments, or have to reborrow. As discussed in Market Concerns—Longer-Term Loans, above, lenders that do not determine ability to repay have default rates of 30 percent and as high as 55 percent. A consumer seeking a loan from such a lender is unlikely to understand that the consumer has more than a one-in-three chance of defaulting. Few consumers will be aware that a lender could stay in business while making loans that so frequently result in default, or that its business model depends upon the lender's ability to time and extract payments from the consumer's account or paycheck, even if extraction of those loan payments leaves the consumer unable to meet other financial obligations and basic living expenses. Instead, based on common experience with consumer credit generally, consumers are likely to assume that the lender's continued existence means the vast majority of a lender's loans are successfully repaid, and that a lender that makes them a covered longer-term loan has determined that they are in approximately as good of a financial position to be able to repay the loan as the other consumers who borrow and repay successfully.

The Bureau believes consumers are especially likely to make such an assumption because of the challenges the consumers would face if they were to attempt to assess their own ability to repay instead of assuming that the lender has done so. A consumer seeking to take out a payday installment or vehicle title installment loan is unlikely to have a recent history of a regular periodic excess of income above expenditures (*i.e.*, additions to savings) that she can simply compare to the loan payment under a prospective covered loan. Instead, to assess her own ability to repay, the consumer would have to assess, at a time of high need and high stress, what level of recent expenditures she could eliminate or reduce, and what additional income she could bring in, immediately and for the full term of the loan. Consumers attempting such assessments would likely fall back on the assumption that other similarly situated consumers must have been able to repay covered longer-term loans under the offered terms, and that she is therefore likely to be able to do so too.

Even if a consumer considering offered loan terms actually attempts such a mental budget exercise, in which she postulates what amounts of recent expenses she could eliminate or of extra income she could bring in going forward, such on-the-fly estimates are highly likely to overestimate her true ability to repay. As discussed above in Market Concerns—Longer-Term Loans, decision-making of consumers confronting time pressure and financial distress are especially likely to be affected by optimism bias. A consumer under these conditions is likely to make exaggerated estimates of additional income she could earn or of expenses that she could reduce. She is also likely to underestimate the likelihood of periodic decreases in income and spikes in expenses. And yet an understanding of the risks of a covered longer-term loan requires a reasonably accurate comparison of her true ability to repay and the prospective loan payments. Even a small error is likely to result in a much higher risk than she likely understands, since the risk of harm from a payment that exceeds her ability to repay will typically compound with each successive payment. As a result, an attempt to assess her personal risk from an unaffordable covered longer-term loan payments is unlikely to lead to an accurate understanding of the true risks. Instead, her attempt to understand the risks is highly likely to seriously underestimate them.

For these reasons, the Bureau preliminarily believes that consumers who take out covered longer-term loans do not understand the high risk that the loan will prove unaffordable, and thus, the risk that they are exposing themselves to collateral consequences of delinquency and default, such as the relatively high likelihood of vehicle repossession.

ii. Severity of Harms

The Bureau likewise believes that consumers who take out covered longer-term loans do not understand just how severe some of the collateral consequences can be if the loan in fact proves unaffordable. This is especially true with respect to hybrid payday loans and payday installment products, which are generally accompanied by a leveraged payment mechanism which enables the lender to automatically debit the consumer's bank account.

When a lender obtains a leveraged payment mechanism, even if a loan payment proves unaffordable, the lender still may be able to extract payment from the consumer's account—especially for loans where payments are timed to coincide with the consumer's paycheck. Thus, the consumer loses a degree of control over her finances, including the ability to prioritize payments of her obligations and expenses based on the timing of her receipts of income. So long as there is money in the account when the lender seeks to collect, the lender can get paid without regard to whether the remaining funds will be sufficient to enable the consumer to make payments on other obligations when she must make them or cover basic living expenses. Thus, at least certain types of covered longer-term loans carry with them a high degree of risk that if the payment proves unaffordable the consumer will still be forced to pay the loan and will incur penalties on other obligations, such as late fees or shut-off fees, or face legal action, such as eviction, because of having had to forgo payment on those other obligations.

Furthermore, even if the consumer's account does not have sufficient funds available to cover the required loan payment, the lender still may be able to collect the payment from the consumer's bank by putting the account into an overdraft position. Where that occurs, the consumer will incur overdraft fees and, at many banks, extended overdraft fees. When new funds are deposited into the account, those funds will go to repay the overdraft and not be available to the consumer to meet her other obligations or basic living expenses. If the account remains negative for a prolonged period of time, the bank will likely close the account.

Of course, the fact that such a large portion of covered longer-term loans end up in default indicates that frequently lenders are unable to collect despite their access to the consumer's account and despite their potential ability to force an overdraft. But before these defaults occur, the lenders will almost surely have made at least one—and more often multiple—attempts to debit the consumer's account. Each such attempt will likely result in an NSF fee, which the bank will recover from any subsequent deposits the consumer makes; again, if the account remains negative for a prolonged period of time the bank will likely close the account. In addition, each failed payment may result in the lender tacking on a returned check fee, a late payment fee, or both, and adding that to the amount the lender demands from the consumer through the collection process.

The Bureau's research provides some insight into the magnitude of these consequences. The Bureau was unable to quantify the extent to which the ability of lenders to extract payments using leveraged payment mechanisms causes collateral injury with respect to consumers' ability to meet other obligations or pay basic living expenses. But by studying payment attempts made by over 330 lenders to almost 20,000 accounts, the Bureau was able to quantify the bank fees that borrowers face. Specifically, the Bureau found that 50 percent of these borrowers incur at least one overdraft or NSF fee in connection with their online payday loans—most of which the Bureau believes to be covered longer term loans—and that these borrowers were charged on average $185 in fees. Thirty-six percent of borrowers who experienced an unsuccessful attempt by an online payday lender to collect a payment from their account subsequently had their accounts closed involuntarily.

The Bureau believes that consumers are not likely to understand the magnitude of these adverse consequences that can arise when unaffordable loan payments are combined with a lender's ability to extract loan payments from a consumer's account when she receives her income. A consumer is unlikely to be aware of the types and severity of such harms at the time the consumer accepts offered loan terms. Some of these harms, such as multiple NSF fees from multiple presentments, are not an obvious or widely understood feature of the ACH system and therefore are likely to be unknown to many consumers. Other types of harm, such as overdraft fees, may be familiar to consumers in a general sense, but consumers are not likely to be aware of the extent to which they risk incurring them. The magnitude of these harms—and the potential for consumer misunderstanding—are multiplied by the fact that as discussed below in this part and in Market Concerns—Payments, leveraged payment mechanisms, once authorized, are not easily revoked. The consumer is likely to assume erroneously that de-authorizing is as easy as authorizing.

2. Consumers Are Unable To Protect Their Interests

Under § 1031(d)(2)(B) of the Dodd-Frank Act, an act or practice is abusive if it takes unreasonable advantage of "the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service." Consumers who lack an understanding of the material risks and costs of a consumer financial product or service often will also have an inability to protect their interests in selecting or using that consumer financial product or service. For instance, as discussed above, the Bureau believes that consumers are unlikely to be able to protect their interests in selecting or using hybrid payday, payday installment, and vehicle title installment loans because they do not understand the material risks and costs associated with the products.

But it is reasonable to also conclude from the structure of section 1031(d), which separately declares it abusive to take unreasonable advantage of consumer lack of understanding or of consumers' inability to protect their interests in using or selecting a product or service that in some circumstances, consumers may understand the risks and costs of a product, but nonetheless be unable to protect their interests in selecting or using the product.

The Bureau believes that consumers who take out hybrid payday, payday installment, and vehicle title installment loans may be unable to protect their interests in selecting or using such loans, given their immediate need for cash and their inability in the moment to search out or develop alternatives that would either enable them to avoid the need to borrow or to borrow on affordable terms. Even if some consumers suspect the unaffordability and resulting risks and costs from payments under an offered covered longer-term loan, they may reasonably believe that they cannot obtain a loan with more affordable payments or a loan without leveraged payment mechanism or vehicle security, either from the same lender or by shopping among other lenders. They may not have the time or other resources to seek out, develop, or take advantage of any existing alternatives, and may reasonably believe that searching for alternatives will be fruitless and costly. As discussed in Markets Concerns—Longer-Term Loans, consumers who take out covered longer-term loans typically have tried and failed to obtain other forms of credit before turning to these loans as a "last resort." Thus, based on their prior unsuccessful experience with attempting to obtain credit, these consumers may reasonably—and often correctly—believe that alternative options would not be available to them. These factors place consumers in a vulnerable position when seeking out and taking these loans, leading to an inability to protect their interests.

Once a consumer has taken out a covered longer-term loan she cannot afford, she will be unable to protect her interests in connection with the loan for a different reason. The unaffordability of loan payments under a covered longer-term loan likely will become apparent to a consumer eventually, either after the consumer makes one loan payment or several loan payments. But by then the consumer is legally obligated to repay the debt, and the best the consumer can do is choose among three bad options: Defaulting on the loan, skipping or delaying payments on major financial obligations or living expenses in order to repay the loan, or taking out another loan that will pose the same predicament. It is even difficult for the consumer to limit the collateral consequences of harm to her bank accounts, since as discussed in Market Concerns—Payments, revocation rights related to various forms of leveraged payment mechanisms are complicated by both lender and financial institution procedural requirements, fees, and other obstacles. Some forms of payment may have no practical revocation right and, of course, there is no revocation right with regard to vehicle security.

3. Practice Takes Unreasonable Advantage of Consumer Vulnerabilities

Congress, through section 1031(d) of the Dodd-Frank Act, has made it unlawful for a lender to take unreasonable advantage of certain specified consumer vulnerabilities in the context of consumer financial products or services. Those specified vulnerabilities include, in relevant part, a consumer's lack of understanding of the material risks, costs, or conditions of a product or service and a consumer's inability to protect her interests in selecting and using a product or service.

The Bureau believes that lenders may take unreasonable advantage of consumers' lack of understanding of the material risks and costs of covered longer-term loans, and of consumers' inability to protect their interests in selecting and using these loans, by structuring the loans to combine a leveraged payment mechanism or vehicle security with high cost and then making such loans without first reasonably determining that the loan payments are within consumers' ability to repay.

As discussed in connection with the Bureau's abusiveness analysis of covered short-term loans, the Bureau recognizes, of course, that in any transaction involving a consumer financial product or service there is likely to be some information asymmetry between the consumer and the financial institution. Often, the financial institution will have superior bargaining power as well. As previously noted, the Bureau does not believe that section 1031(d) of the Dodd-Frank Act prohibits financial institutions from taking advantage of their superior knowledge or bargaining power to maximize their profit. Indeed, in a market economy, market participants with such advantages are generally expected to pursue their self-interests. However, section 1031(d) of the Dodd-Frank Act makes plain that there comes a point at which a financial institution's conduct in leveraging consumer's lack of understanding or inability to protect their interests becomes unreasonable advantage-taking and thus potentially abusive.

The Dodd-Frank Act delegates to the Bureau the responsibility for determining when that line has been crossed. As previously explained, the Bureau believes that such determinations are best made with respect to any particular act or practice by taking into account all of the facts and circumstances that are relevant to assessing whether such an act or practice takes unreasonable advantage of consumers' lack of understanding or of consumers' inability to protect their interests. Several interrelated considerations lead the Bureau to believe that the practice of making covered longer-term loans without regard to consumers' ability to repay may cross the line and take unreasonable advantage of consumers' lack of understanding and inability to protect their interests.

The Bureau first notes that the practice of making loans without regard to the borrower's ability to repay stands in stark contrast to the practice of lenders in virtually every other credit market, and upends traditional notions of responsible lending enshrined in safety-and-soundness principles as well as in a number of laws.[681] The general presupposition of credit markets is that the interest of lenders and borrowers are closely aligned: Lenders succeed (*i.e.,* profit) only when consumers succeed (*i.e.,* repay their loans according to their terms). For example, lenders in other markets, including other subprime lenders, typically do not make loans without first making a reasonable assessment that consumers have the capacity to repay the loan according to the loan terms. Indeed, "capacity" is one of the traditional three "Cs" of lending and is often embodied in tests that look at debt as a proportion of the consumer's income or at the consumer's residual income after repaying the debt.

In the markets for hybrid payday, payday installment, and vehicle installment loans, however, lenders have built a business model that—unbeknownst to borrowers—depends on the lenders' *ability to collect* rather than on the consumers' *ability to repay.* As explained above, lenders have used leveraged payment mechanisms and vehicle security in combination with high pricing to ensure that they can extract payments from consumers without regard to whether consumers can afford to make those payments. This assures that lenders can collect enough money from enough consumers to allow the lenders to stay in business and profit despite extraordinarily high levels of default. The cycle quickly becomes vicious for consumers: Lenders make loans without regard to consumers' ability to repay, which results in high levels of defaults and, in turn, further fuels lenders' dependence on high prices and various back-end mechanisms to extract sufficient payments to cover loan losses.

As discussed above, the result is that consumers face very significant and severe risks that they do not understand and from which they are unable to protect their interests by taking any realistic action prior to or after consummation of the loan. On the other side of the transaction, lenders are of course aware of the high default rates on their loans and know that they have not made any attempt to match the payment terms they offer to the financial capacity of the consumer, so that there is a high likelihood that the loan payments will prove unaffordable for a given consumer. But consumers do not understand this. Lenders also know that the defining loan features will enable the lender to extract payment from the consumer even if the payment exceeds the consumer's ability to repay and leaves her in financial distress, but consumers do not understand the likelihood or severity of the harms they will suffer in that scenario.

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[681] Dodd-Frank Act section 1411, codified at 15 U.S.C. 1639c(a)(1); CARD Act, 15 U.S.C. 1665e; HPML Rule, 73 FR 44522 at 44543; OCC Advisory Letter 2003-3, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans (Feb. 21, 2003), *available at http://www.occ.gov/static/news-issuances/memos-advisory-letters/2003/advisory-letter-2003-3.pdf*; OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70624 (Nov. 23, 2010); FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 23, 2010).

Also relevant in assessing whether the practice at issue involves unreasonable advantage-taking is the vulnerability of the consumers seeking these types of loans. As discussed in Market Concerns—Longer-Term Loans, borrowers of hybrid payday, payday installment, and vehicle installment loans generally have modest incomes, little or no savings, and have tried and failed to obtain other forms of credit. As discussed above, consumers who seek a covered longer-term loan typically do so when they face an immediate need for cash. They are unlikely to be able to accurately self-underwrite and, even if they recognized or suspected that offered loan terms are likely to prove unaffordable, reasonably believe that more favorable loans are not available to them. On the other side of the transaction, lenders know, at a minimum, that many consumers who are unable to afford the loans they offer take them out anyway.

For these reasons, the Bureau believes that lenders may take unreasonable advantage of consumers' lack of understanding of these risks and costs, and of consumers' inability to protect their interests, when they make covered longer-term loans without making any reasonable determination that the consumer will have the ability to make the payments under the loan.

b. Unfairness

Under section 1031(c)(1) of the Dodd-Frank Act, an act or practice is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidably by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition. Based on the evidence and concerns described in Market Concerns—Longer-Term Loans, the Bureau is proposing to identify the practice of making a covered longer-term loan without making a reasonable determination that the consumer will have the ability to repay the loan as an unfair practice. When a lender makes such a loan to a consumer without first making a reasonable determination that the consumer will have the ability to repay it, it appears that act or practice causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and that is not outweighed by countervailing benefits to consumers or competition.

1. Causes or Is Likely To Cause Substantial Injury

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law.[682] Under these authorities, as discussed in part IV, substantial injury may consist of a small amount of harm to a large number of individuals or a larger amount of harm to a smaller number of individuals.

When a lender makes a loan with the characteristics that make it a covered longer-term loan—a leveraged payment mechanism or vehicle title and a high-cost structure—and fails to first determine that the consumer will have the ability to repay, that practice appears to cause or likely cause serious injury to substantial numbers of consumers. As discussed above in Market Concerns—Longer-Term Loans, failure to first determine that the loan payments will be within a consumer's ability to repay causes or is likely to cause many consumers to receive loans with payments that exceed their ability to repay. When the lender also obtains a leveraged payment mechanism or vehicle security when originating the loan, the injury to consumers from making unaffordable payments is likely to be substantial, as is also discussed above in Markets—Longer-Term Loans. By engaging in practices that increase the likelihood, magnitude, and severity of the risks to consumers, the lender's actions cause or are likely to cause substantial injury.

The injury that is easiest to observe and quantify is the extent to which the practice of making these loans without assessing the consumer's ability to repay leads to default. As discussed above, lenders that do not determine ability to repay commonly have default rates of 30 percent and as high as 55 percent. In the case of a loan for which the lender obtains the ability to extract loan payments from the consumer's bank account, the course of default typically includes several attempts by a lender to extract the payments, which fail due to insufficient funds in the account. Each time this occurs, the consumer's depository institution typically imposes an NSF fee, and the lender often imposes a fee as well. Repeated NSF fees can be followed by involuntary account closure and exclusion from the banking system. As discussed above, the Bureau's research with respect to online payday and payday installment loans found that following an NSF fee, 36 percent of accounts were closed within thirty days. In the case of an auto title loan, the lender may repossess the consumer's car, which can in turn result in inability to travel to work and loss of employment. As discussed above in part Market Concerns—Longer-Term Loans, evidence shows that over one in ten vehicle title installment loan sequences leads to repossession.

Even consumers who are able to make all of their payments on a payday installment or vehicle title installment loan can suffer substantial injury as a result of the failure of the lender to assess whether the consumer can afford to repay the loan. As discussed in Market Concerns—Longer-Term Loans the lender may extract, or the consumer may make, loan payments which leave the consumer unable to meet other financial obligations as they fall due and meet basic living expenses as they arise. Indeed, when a loan is an auto title loan or provides the lender the ability to extract loan payments from the consumer's bank account or paycheck, the lender is likely to receive payment even when that leaves the consumer with insufficient funds to meet other obligations and expenses. At a minimum, as discussed above in Market Concerns—Longer-Term Loans, the consumer loses control over her finances, including the ability to prioritize payments of her obligations and expenses based on the timing of her receipts of income. This injury is especially likely to occur when a lender times the unaffordable loan payments to coincide with the consumer's receipts of income, which is common with covered longer-term loans. The consumer is then left with insufficient funds to meet other financial obligations and basic living expenses. For example, a consumer may then be unable to meet expenses such as food, medical care, daycare for dependent children, transportation, or other expenses that are essential for maintaining her source of income. Such consequences could occur prior to a default—if the lender for a time was able to exact unaffordable payments from the consumer's account—or could occur in lieu of a default, if the lender is able to consistently extract payments that are not affordable.

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[682] Over the past several decades, the FTC and Federal banking regulators have promulgated a number of rules addressing acts or practices involving financial products or services that the agencies found to be unfair under the FTC Act (the 1994 amendments to which codified the FTC Policy Statement on Unfairness). For example, in the Credit Practices Rule, the FTC determined that certain features of consumer-credit transactions were unfair, including most wage assignments and security interests in household goods, pyramiding of late charges, and cosigner liability. 49 FR 7740 (March 1, 1984) (codified at 16 CFR 444). The D.C. Circuit upheld the rule as a permissible exercise of unfairness authority. *AFSA*, 767 F.2d at 957. The Federal Reserve Board adopted a parallel rule applicable to banks in 1985. (The Federal Reserve Board's parallel rule was codified in Regulation AA, 12 CFR part 227, subpart B. Regulation AA has been repealed as of March 21, 2016, following the Dodd-Frank Act's elimination of the Federal Reserve Board's rule writing authority under the FTC Act. *See* 81 FR 8133 (Feb. 18, 2016)). In 2009, in the HPML Rule, the Federal Reserve Board found that disregarding a consumer's repayment ability when extending a higher-priced mortgage loan or HOEPA loan, or failing to verify the consumer's income, assets, and obligations used to determine repayment ability, is an unfair practice. *See* 73 FR 44522 (July 30, 2008). The Federal Reserve Board relied on rulemaking authority pursuant to TILA section 129(l)(2), 15 U.S.C. 1639(l)(2), which incorporated the provisions of HOEPA. The Federal Reserve Board interpreted the HOEPA unfairness standard to be informed by the FTC Act unfairness standard. *See* 73 FR 44529 (July 30, 2008). That same year, the Federal Reserve Board, the OTS, and the NCUA issued the interagency Subprime Credit Card Practices Rule, in which the agencies concluded that creditors were engaging in certain unfair practices in connection with consumer credit card accounts. *See* 74 FR 5498 (Jan. 29, 2009).

In addition, it is common for depository institutions to honor a payment of a deposited post-dated check or electronic debit even if the payment exceeds the consumer's account balance. In that case, the result is that the payment results in overdraft of the consumer's account, which typically leads to substantial fees imposed on the consumer and, if the consumer cannot clear the overdraft, may lead to involuntary account closure and even exclusion from the banking system.

Third, a consumer facing an imminent unaffordable loan payment may refinance or reborrow in a way that adds to its total costs. As discussed above in Market Concerns—Longer-Term Loans, refinancing and reborrowing are especially likely to be provoked by a balloon payment, and refinancing and reborrowing are especially likely to add dramatically to total costs when the payments preceding a balloon-payment are interest-only payments, as is common. In that case, refinancing or reborrowing may bring about new finance charges equal to what the consumer paid under the prior loan, because the payments on the prior loan did little, if anything, to amortize the principal. The additional cost is then the result of the original, unaffordable loan, and constitutes injury because it is a cost that the consumer almost certainly did not anticipate and take into account at the time she decided to take out the original loan. The higher the total cost of credit, the greater the injury to consumers from these unanticipated costs.

2. Consumer Injury Not Reasonably Avoidable

As previously noted in part IV, under the FTC Act unfairness standard, the FTC Policy Statement on Unfairness, FTC and other Federal agency rulemakings, and related case law, which informs the Bureau's interpretation and application of the unfairness test, an injury is not reasonably avoidable where "some form of seller behavior . . . unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making,"[683] or put another way, unless consumers have reason to anticipate the injury and the means to avoid it.

It appears that many consumers cannot reasonably avoid the injury that results when a lender makes a covered longer-term loan and does not determine that the loan payments are within the consumer's ability to repay. To be able to avoid the injury from entering into a loan with unaffordable payments, a consumer must have a reason to anticipate the injury before entering into the loan. But a confluence of factors creates obstacles to free and informed consumer decision-making, preventing consumers from being able to reasonably anticipate the likelihood and severity of injuries that frequently result from such loans. And after entering into the loan, consumers do not have the means to avoid the injuries that may result should the loan prove unaffordable.

Many consumers are unable to reasonably anticipate the risk that payments under a prospective covered longer-term loan will be unaffordable to them or the range and severity of the harm they will suffer if payments under the loan do prove unaffordable. Based, in part, on their experience with other credit products, they have no reason to understand the way lenders use the ability to extract unaffordable payments from borrowers to make more loans, larger loans, and loans with less affordable payment schedules than they otherwise would while disregarding the affordability of loan payments to a consumer. For example, few consumers are likely aware that an auto title lender may base its underwriting decisions in part on the borrower's perceived attachment to and practical reliance on a vehicle, rather than on the consumer's ability to make loan payments or even on the resale value of the car alone.

Similarly, based on their experience with other credit products, few, if any, consumers are likely aware of the high percentage of covered longer-term loans that result in default or collateral harms from unaffordable payments or that lenders are able to stay in business and profit even when so many consumers default. On the contrary, consumers reasonably expect that the lender's continued existence means the vast majority of a lender's loans are successfully repaid, and that a lender that makes them a covered longer term loan has determined that they are in approximately as good of a financial position to be able to repay the loan as the other consumers who borrow and repay successfully. As a result, a consumer is unlikely to appreciate the high degree of vigilance she must exercise to ensure that loan payments will in fact be within her ability to repay.

In theory, a consumer who realized the importance of being so vigilant could avoid injury by self-underwriting. However, consumers' ability to make accurate assessments is hindered by the specific conditions under which these borrowers seek out such credit in the first place. A consumer seeking to take out a payday installment or vehicle title installment loan is unlikely to have a recent history of a regular periodic excess of income above expenditures (*i.e.*, additions to savings) that she can simply compare to the loan payment under a prospective covered loan. Instead, to assess her own ability to repay, the consumer would have to assess, at a time of high need and high stress, what level of recent expenditures she could eliminate or reduce, and what additional income she could bring in, immediately and for the full term of the loan. Consumers attempting such assessments would likely fall back on the assumption that other similarly situated consumers must have been able to repay covered longer-term loans under the offered terms, and that she is therefore likely to be able to do so too.

As discussed above, even if a consumer considering offered loan terms actually attempts such a mental budget exercise, in which she postulates what amounts of recent expenses she could eliminate or of extra income she could bring in going forward, such on-the-fly estimates are highly likely to overestimate her true ability to repay. As discussed above in Market Concerns—Longer-Term Loans, decision-making of consumers confronting time pressure and financial distress are especially likely to be affected by optimism bias. A consumer under these conditions is likely to make exaggerated estimates of additional income she could earn or of expenses that she could reduce. She is also likely to underestimate the likelihood of periodic decreases in income and spikes in expenses. And yet an understanding of the risks of a covered longer-term loan requires a reasonably accurate comparison of her true ability to repay and the prospective loan payments. Even a small error is likely to result in a much higher risk than she likely understands, since the risk of harm from a payment that exceeds her ability to repay will typically compound with each successive payment. As a result, an attempt to assess her personal risk from an unaffordable covered longer-term loan payments is unlikely to lead to an accurate understanding of the true risks. Instead, her attempt to understand the risks is highly likely to seriously underestimate them.

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[683] FTC Policy Statement on Unfairness, 104 FTC at 1074.

Consumers likewise do not have a reason to anticipate the impact of strategically timed payment extraction on their finances. Consumers who mistakenly believe that a loan payment is within their ability to repay do not have an incentive to seek out and focus on provisions for income-timed payments extraction or to understand the implication or effect of such provisions if combined with an unaffordable payment. Consumers who believe they are unlikely to qualify for loans on more favorable terms are especially unlikely to focus on such provisions and on severity of the risk they pose, since they believe—often correctly—they are not in a position to obtain a more advantageous loan even if they identified objectionable provisions. Further, the provisions do not make clear how the lender may time extraction of the payment so that the lender will receive payment even if it exceeds the consumer's ability to repay. Provisions permitting a lender to make use of remotely created checks are even more obscure and incomprehensible to consumers than those providing for more traditional electronic funds transfers from consumers' accounts.

As discussed above, some consumers may suspect that payments under a prospective covered longer-term loan may be unaffordable. Such consumers could protect their interest in connection with such a loan by locating a more favorable loan. Such an alternative loan could be more favorable in two ways: (1) Being less expensive, or (2) lacking a leveraged payment mechanism or vehicle security. However, the Bureau believes that consumers who take out a covered longer-term loan may not be able to avoid the substantial injury in this manner for at least two reasons. First, consumers who find it necessary to seek covered longer-term loans are likely to be experiencing an immediate need for cash and reasonably believe that they are unlikely to find and qualify for better credit options in the immediate timeframe they face. As a result, they may make a reasoned decision to accept covered longer-term loans even when suspecting they may have difficulty affording the payments. Second, lenders do not compete on loans' inclusion (or exclusion) of leveraged payment mechanisms or vehicle security because they have no incentive to do so. On the contrary, as discussed above and in Market Concerns—Longer-Term Loans, lenders have a powerful incentive to include these features: Their entire business model depends on it.

As discussed above, once a consumer has become obligated on a covered longer-term loan with unaffordable payments because she was unable to reasonably anticipate the injuries from taking out such a loan, it is often too late for the consumer to act to avoid the injury. At that point the consumer lacks the means to avoid the injury. If the lender secured the ability to extract payments from the consumer's account, the consumer may theoretically be able to revoke her authorization to the lender to do so or otherwise stop payment, but as explained in Market Concerns—Longer-Term Loans, above, and Market Concerns—Payments, below, there are numerous practical impediments to such revocation that prevent it from being a reasonable means of avoiding the injury. For example, lenders often create a variety of procedural obstacles to revocation, and depository institutions may also impose procedural hurdles and fees for revocation. Some mechanisms, such as remotely created checks, once authorized, may not be revocable. And some lenders may attempt to require the consumer to provide an alternative leveraged payment mechanism or impose other penalties if the consumer seeks to revoke authorization for a particular method of accessing the consumer's account.

3. Injury Not Outweighed by Benefits to Consumers or Competition

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law. Under those authorities, it generally is appropriate for purposes of the countervailing benefits prong of the unfairness standard to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice, but the determination does not require a precise quantitative analysis of benefits and costs.

It appears to the Bureau that the current practice of making payday installment, vehicle title installment loans, and other covered longer-term loans without determining that the consumer has the ability to repay does not result in benefits to consumers or competition that outweigh the substantial injury that consumers cannot reasonably avoid. As discussed above, the amount of injury that is caused by the unfair practice, in the aggregate, appears to be extremely high. Although some individual consumers may be able to avoid the injury, as noted above, a large amount of the substantial injury is not reasonably avoidable. A significant number of consumers who obtain payday installment and vehicle title installment loans end up defaulting. These consumers put either their checking account or their vehicle at risk, and subject themselves to aggressive debt collection practices. In addition, many borrowers also experience substantial injury that is not reasonably avoidable as a result of repaying a loan but not being able to meet other obligations and expenses. Many consumers also suffer harm in the form of costs of refinancing and reborrowing caused by unaffordable payments, most often in connection with a covered longer-term loan that includes a balloon payment.

Against this very significant amount of harm, the Bureau must weigh several potential countervailing benefits to consumers or competition of the practice in assessing whether it is unfair. For purposes of analysis, the Bureau divided would-be borrowers into two groups.

The first group consists of borrowers who obtain loans under the status quo and make each payment that falls due under the loans. The Bureau includes in this group those consumers who make a payment but then find it necessary to reborrow, most notably those who do so upon making a balloon payment. The Bureau also includes in this group those consumers who refinance a loan so that, for example, an unaffordable balloon payment that would have fallen due is replaced with a new loan that the consumer repays. The Bureau refers to these borrowers as "repayers" for purposes of this countervailing benefits analysis. As discussed in Market Concerns—Longer-Term Loans, 62 percent of payday installment loan sequences and 69 percent of vehicle title loan sequences end with the consumer repaying the loan.

The Bureau believes that for the most part these consumers could reasonably have been determined at consummation to have had the ability to repay the loans they received, such that the ability-to-repay requirement in proposed § 1041.9 would not have a significant impact on their eligibility for this type of credit. For these borrowers, at most the proposed requirements would reduce somewhat the speed and convenience of applying for a loan. Under the status quo, consumers generally can obtain payday installment loans simply by going online, filling out an application, and showing some evidence of a checking account; storefront payday lenders making payday installment loans may require a little more. For vehicle title loans, all that is generally required is that the consumer owns her vehicle outright without any encumbrance.

Under the proposal, lenders likely would require more information and documentation from or for the consumer. Indeed, under the proposed rule, lenders would be required to obtain a consumer's written statement of her income and payments under major financial obligations. Lenders would also be required to obtain verification evidence of consumers' income and payments under major financial obligations, including their housing expenses. Lenders may in some cases comply with these proposed requirements for verification evidence by seeking documentation from the consumer, which could reduce the speed and convenience for consumers.

Additionally, when a lender makes a loan without determining a consumer's ability to repay today, the lender can make the loan instantaneously upon obtaining whatever documentation the lender chooses to require. In contrast, if lenders assessed consumers' ability to repay under proposed § 1041.9, they would be required to obtain the consumer's borrowing history and determine the consumer's outstanding covered loans using the lender's own records and a report from a registered information system. Lenders would also be required to obtain a consumer report from a national credit reporting agency as verification evidence of a consumer's payments under other major financial obligations. Using this information, along with verification evidence of income, lenders would have to calculate the consumer's residual income by subtracting the consumer's payments under major financial obligations from the consumer's projected income.

As discussed below in the section-by-section analysis of proposed § 1041.9, the proposed rule has been designed to enable lenders to obtain electronic verification evidence for income and payments under major financial obligations, to use a model to estimate housing expenses, and to automate the process of securing additional information and determining the consumer's ability to repay. If the proposed ability-to-repay requirements are finalized, the Bureau anticipates that repayers would be able to obtain credit under proposed § 1041.9 to a similar extent as they do in the current market. While the speed and convenience fostered by the current practice may be reduced for these consumers under the proposed rule's requirements, the Bureau does not believe that the proposed requirements will be overly burdensome in this respect. As described in part VI, the Bureau estimates that the required ability-to-repay determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system.

While the Bureau believes that lenders would be able to obtain verification evidence needed to demonstrate the ability to repay of most repayers under proposed § 1041.9, the Bureau recognizes that there is a subset of repayers who could not demonstrate their ability to repay the loans they currently are able to receive if required to do so by a lender. For example, some consumers may face challenges in providing verification evidence for a portion or even all of their income. The current lender practice of making loans without determining ability to repay enables these consumers to obtain credit that, by hypothesis, may actually be within their ability to repay. In contrast, the proposed rule's requirement for a lender to obtain verification evidence for a consumer's income may result in some such consumers being deemed to lack the ability to repay a loan they actually might be able to repay (*i.e.*, the "false negative" effect). The Bureau acknowledges that for this group of consumers there may be a significant benefit in being able to obtain covered loans despite a lender's inability to determine their ability to repay in the way prescribed by proposed § 1041.9.

However, the Bureau believes that under the proposed rule, lenders will generally be able to determine consumers' ability to repay and that the size of any residual false negative population will be small. As discussed further below, the Bureau has structured the proposed rule to try to provide substantial flexibility on verification and other underwriting requirements, and is seeking further comment in hopes of identifying additional appropriate measures. The Bureau also notes that these borrowers will generally be motivated to attempt to provide verification evidence needed to determine their ability to repay, in order to receive the loan. It will also be in lenders' interest to obtain the verification evidence needed to determine consumers' an ability to repay. Moreover, even if these consumers could not qualify for the same loan they would have obtained absent an ability-to-pay requirement (*e.g.*, if verification evidence does not exist for a portion of their income), they may still be able to get credit on different terms within their demonstrable ability to repay, such as a loan with a longer term and smaller periodic payments.[684] So long as the loan did not come with a prepayment penalty, these consumers would not be adversely affected by obtaining such a loan since, if the lender underestimates their ability to repay, the consumers could prepay the loan. For these reasons, the Bureau does not believe that there would be a large false negative effect if lenders made loans only to those with the ability to repay.

In addition, the Bureau notes that some current repayers may not actually be able to afford payments under the loans the currently are able to obtain, but end up repaying it nonetheless (rather than reborrowing or defaulting). By definition, this subset of repayers are then unable to meet other expenses and obligations, which may result in them defaulting on or incurring costs in connection with those obligations, such as shut-off of or late fees on utilities. Other repayers respond to an unaffordable payment by refinancing the original loan and incurring additional costs, most typically when a consumer confronts an unaffordable balloon payment. Such repayers would not be able to obtain under proposed § 1041.9 the same loan that they would have obtained absent an ability-to-repay requirement, but they might obtain a loan on different terms (*e.g.*, a longer term with smaller payments) that they could afford. Thus, any benefit they receive under the current practice—to the extent such benefit exists at all—would appear to be extremely modest.

The other group of borrowers consists of those who eventually default on their loans, either when the first payment is due or at a later point in time. In some cases these borrowers default after having refinanced a prior loan with an unaffordable balloon payment and replacing it with a new loan with an unaffordable balloon payment that falls due later. The Bureau refers to all of these borrowers as "defaulters" for purposes of this countervailing benefits analysis. As discussed in Market Concerns—Longer-Term Loans, in the data available to the Bureau, 31 percent of payday installment sequences and 38 percent of vehicle title installment sequences are taken out by borrowers who end up defaulting.

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[684] The borrowers might also be able to obtain loans made under proposed §§ 1041.11 and 1041.12.

For these consumers, the current lender practice of making loans without regard to their ability to repay may enable them to obtain what amounts to a temporary "reprieve" from their current situation: They can obtain some cash, which may enable them to pay a current bill or current expense. How much of a reprieve the loan provides is entirely speculative. The fact that these consumers eventually default suggests that similar-sized payments they made prior to the payment provoking default—either because the lender extracted money from the consumer's account or because the consumer elected to make a payment to stave off a potential automobile repossession—were unaffordable and caused collateral harm in the meantime. Defaulters are merely substituting a payday installment lender or auto title installment lender for a preexisting creditor, and in doing so, end up in a deeper hole by accruing and paying finance charges, late fees, or other charges at a high rate and enduring additional financial distress, only to face the injuries of default once it occurs. Moreover, for the vast majority of consumers, who do not understand how much risk of default and of collateral damage they are taking on with these loans,[685] at least some portion of these defaulters would be able to obtain credit on more affordable terms if lenders were required to undertake ability-to-repay determinations. To the extent that is true, the "reprieve" that these borrowers are obtaining from the present system is illusory and actually detrimental to their well-being relative to a system in which lenders made loans that consumers could afford to repay. In sum, the Bureau thus does not believe that these defaulters obtain significant benefits from the current lender practice of not determining ability to repay.[686]

In all events, the Bureau believes that the substantial injury suffered by the defaulters, as well as by those repayers who suffer collateral harms from unaffordable or who must refinance or reborrow as a result of balloon and similar unaffordable payments, dwarfs any benefits these groups of borrowers may receive in terms of a temporary reprieve. It also dwarfs the speed and convenience benefits that the repayers may experience. The Bureau acknowledges that any benefits derived by the aforementioned consumers subject to false negative effects may be reduced under the proposed rule, but the Bureau believes that the benefits that this relatively small group receives is outweighed by the substantial injuries to the defaulters and repayers as discussed above. Further, the Bureau believes that under the proposed intervention, many of these borrowers may find more affordable options, such as underwritten credit on terms that are tailored to their budget and more affordable.

The Bureau recognizes that the proposed rule would also have some impacts on lenders' operating costs relative to the status quo, where instead of undertaking the expense and effort of evaluating a potential borrower's residual income, lenders need only secure relatively inexpensive forms of preferred repayment. Theoretically, these resulting avoided costs could benefit consumers, and therefore be germane to the present analysis, to the extent that they resulted in lender net savings that lenders passed on to consumers in the form of lower borrowing costs. But there is little reason to believe that this actually happens in practice. As discussed above in Part II, rather than competing on price, lenders typically charge the maximum amount allowed under State law and instead compete based on friendliness of customer service, as well as on the convenience of store locations and similar factors. In such a market, marginal costs avoided—such as costs avoided by declining to underwrite—are unlikely to result in lower borrowing costs for consumers.

In addition, the Bureau also believes that the net savings to lenders from making loans without determining ability to repay is relatively modest. The Bureau has crafted the proposed ability-to-repay requirement to avoid unnecessary costs. For example, the proposal provides substantial flexibility in the options for verification evidence that lenders could use. It provides an option for lenders to estimate housing expense, rather than to obtain verification evidence, and it does not require inventorying or verification of basic living expenses. Further, the principal amounts and total costs of credit that are typical with covered longer-term loans mean that in many cases the cost of compliance per prospective transaction should be relatively modest compared to revenue from each transaction.

Similarly, the Bureau does not believe that overall lender revenues would be significantly reduced as a result of the proposed requirements, in that lenders would still be able to make loans to most consumers, but loans with payments that are within the consumer's ability to repay. Such loans would tend to have more affordable payments but longer durations, compared to loans made under the status quo, and there is no reason to assume that shift in repayment schedules would tend to reduce lender revenues. Further, the Bureau believes that the total cost of compliance to lenders would be offset to a significant extent by losses from default that lenders will avoid as a result of complying with the requirement to make a reasonable determination that the borrower has the ability to repay the loan prior to making the loan.[687]

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[685] The Bureau would not count for purposes of substantial injury the default costs of individual consumers who fully recognized the risks and costs of hybrid payday, payday installment, and vehicle title installment loans and decided that the temporary reprieves were worth the downstream costs, but the Bureau believes that there are few such consumers.

[686] The Bureau recognizes that defaulters may not default because they lack the ability to repay, but the Bureau believes that the percentage of consumers who default despite having the ability to repay the loan is small. Moreover, any benefit such borrowers derive from the loan would not be diminished by proposed § 1041.9 precisely because they have the ability to repay the loans.

[687] The Bureau also believes that these features will minimize costs for lenders who offer longer-term products besides hybrid payday, payday installment, and vehicle title installment loans that would fall within the scope of the definition. The Bureau recognizes that these lenders tend to engage in more substantive underwriting and that in some cases their ability to repay determinations are very similar to, and have similar costs as, the determination that would be required under this proposal.

Some of these lenders have indicated to the Bureau that they do not believe compliance with the rule would involve substantial amounts of new cost. *See, e.g.,* World Acceptance, Form 10-K Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations—Regulatory Matters" (2015), *available at https://www.sec.gov/Archives/edgar/data/108385/000010838515000036/wrld-331201510xk.htm* ("The Company does not believe that these proposals as currently described by the CFPB would have a material impact on the Company's existing lending procedures, because the Company currently underwrites all its loans (including those secured by a vehicle title that would fall within the scope of these proposals) by reviewing the customer's ability to repay based on the Company's standards.").

Turning to benefits of the practice for competition, the Bureau does not believe that the proposed ability-to-repay requirement will reduce the competitiveness of the markets for covered longer-term loans. The Bureau does not expect, based on its analysis, that the proposed rule will lead to substantial contraction in the industry.

In sum, it appears that the benefits of the identified unfair practice for consumers and competition do not outweigh the substantial, not reasonably avoidable injury caused or likely to be cause by the practice. On the contrary, it appears that the very significant injury caused by the practice outweighs the very small benefits of the practice to consumers.

4. Public Policy

Section 1031(c)(2) of the Dodd-Frank Act states that "the Bureau may consider established public policies as evidence to be considered with all other evidence" in determining whether an act or practice is unfair. In addition to the evidence described above and in Markets Concerns—Longer-Term Loans, established public policy appears to support a finding that it is an unfair practice for lenders to make covered longer-term loans without making a reasonable determination that the consumer will have the ability to repay the loan.

As discussed above, the Dodd-Frank Act, the CARD Act, the Federal Reserve Board's Higher-Priced Mortgage Loan Rule, guidance from the OCC on abusive lending practices, and guidance from the OCC and FDIC on deposit advance products all require or recommend that certain lenders assess their customers' ability to repay before extending credit.

Such widely-adopted requirements and guidance evince a clear public policy that consumers (as well as safety and soundness interests) suffer substantial injury from loans and other extensions of credit that exceed their ability to repay, and that it is necessary or appropriate for lenders to determine that loan and credit terms are within a consumer's ability to repay, as a condition of making the loan or extending the credit. These public policies show that such determinations are especially critical when subprime or high-cost credit is extended to vulnerable consumers. These policies evince a determination by policymakers that such determinations are necessary because the consumer injury from such practices persists in the absence of regulatory intervention, and that such practices do not provide benefits to consumers that outweigh the harm they cause. Accordingly, the Bureau believes this extensive body of policy is evidence supportive of its unfairness finding.

In addition, the FTC's Credit Practices Rule[688] bans certain provisions in consumer credit contracts allowing for extraction of unaffordable payments from consumers, such as certain provisions for wage assignments and taking a security interest in household goods. That rule reflects a conclusion that such provisions can cause severe risk of injury to consumers. The Bureau's proposal would not be as limiting as the Credit Practices Rule, in that the Bureau is not proposing to prohibit vehicle title loans or loans under which a lender can extract payment from a consumer's account or paycheck. Instead, the Bureau's proposal would permit such practices, provided that the lender first determines that the consumer will have the ability to repay the loan.

The Bureau seeks comment on the evidence and proposed findings and conclusions in proposed § 1041.8 and Market Concerns—Longer-Term Loans above. As discussed below in connection with proposed §§ 1041.11 and 1041.12, the Bureau also seeks comment on whether making loans with the types of consumer protections contained in proposed § 1041.11(b) through (e) or the types of consumer protections contained in proposed § 1041.12(b) through (f) should not be included in the practice identified in proposed § 1041.8.

Section 1041.9 Ability-to-Repay Determination Required

As discussed in the section-by-section analysis of § 1041.8 above, the Bureau has tentatively concluded that it is an unfair and abusive act or practice to make a covered longer-term loan without reasonably determining that the consumer will have the ability to repay the loan. Section 1031(b) of the Dodd-Frank Act provides that the Bureau's rules may include requirements for the purpose of preventing unfair or abusive acts or practices. The Bureau is proposing to prevent the abusive and unfair practice by including in proposed §§ 1041.9 and 1041.10 minimum requirements for how a lender may reasonably determine that a consumer has the ability to repay a covered longer-term loan.

The Bureau notes that the provisions of proposed § 1041.9, which would apply to longer-term loans, mirror and for the most part are identical to the provisions of proposed § 1041.5, which would apply to short-term loans. The same is true of the corresponding proposed commentary for and section-by-section analyses of the two proposed sections. Accordingly, readers who have reviewed proposed § 1041.5, its proposed commentary, and their section-by-section analyses, may find it unnecessary to review the entirety of this section-by-section analysis of proposed § 1041.9 or the proposed regulatory and commentary provisions it discusses. The Bureau is proposing to include proposed §§ 1041.5 and 1041.9 and providing separate commentary and section-by-section analyses for those readers who may be interested in only the content that applies to short-term or longer-term loans, respectively.

Proposed § 1041.9 sets forth the prohibition against making a covered longer-term loan (other than a loan that satisfies the conditions in proposed § 1041.11 or § 1041.12) without first making a reasonable determination that the consumer will have the ability to repay the covered longer-term loan according to its terms. It also, in combination with proposed § 1041.10, specifies minimum elements of a baseline methodology that would be required for determining a consumer's ability to repay, using a residual income analysis and an assessment of the consumer's prior borrowing history. In crafting the baseline ability-to-repay methodology established in proposed §§ 1041.9 and 1041.10, the Bureau is attempting to balance carefully several considerations, including the need for consumer protection, industry interests in regulatory certainty and manageable compliance burden, and preservation of access to credit.

Proposed § 1041.9 would generally require the lender to make a reasonable determination that a consumer will have sufficient income, after meeting major financial obligations, to make payments under a prospective covered longer-term loan and to continue meeting basic living expenses. However, based on feedback from a wide range of stakeholders and its own internal analysis, as well as the Bureau's belief that consumer harm has resulted despite more general standards in State law, the Bureau believes that merely establishing such a general requirement would provide insufficient protection for consumers and insufficient certainty for lenders.

Many lenders making payday installment loans have informed the Bureau that they conduct some type of underwriting on covered loans and assert that it should be sufficient to meet the Bureau's standards. However, as discussed above, such underwriting often is designed to screen primarily for fraud (including first payment defaults) and to assess whether the lender will be able to extract payments from the consumer. It typically makes no attempt to assess whether the consumer might be forced to forgo basic necessities or to default on other obligations in order to repay the covered loan over its term. At most, industry underwriting goes no further than to predict the consumer's *propensity* to repay rather than the consumer's *financial capacity* (*i.e.* ability) to repay consistent with the consumer's other obligations and need to cover basic living expenses. Such underwriting ignores the fact that repayment may force the consumer to miss other obligations or to be unable to cover basic living expenses.

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[688] 16 CFR part 444.

The Bureau acknowledges that some online and storefront lenders have reported to the Bureau that they have adopted robust underwriting approaches in making loans, some of which would be covered longer-term loans under the proposal. The Bureau believes that these lenders will be able to adjust their underwriting methodologies to comply with proposed §§ 1041.9 and § 1041.10 with relatively minor modifications. The Bureau also recognizes that some community banks have reported to the Bureau that they make some covered longer-term loans based on their relationship method of underwriting. Proposed § 1041.12 would provide an exemption that the Bureau believes many lenders will be able to rely upon to continue making such loans subject to certain protective conditions.

The Bureau believes that to prevent the abusive and unfair practice that appears to be occurring in the market, it is appropriate not only to require lenders to make a reasonable determination of a consumer's ability to repay before making a covered longer-term loan but also to specify minimum elements of a baseline methodology for evaluating consumers' individual financial situations, including their borrowing history. The baseline methodology is not intended to be a substitute for lender screening and underwriting methods, such as those designed to screen out fraud or predict and avoid other types of lender losses. Accordingly, lenders would be permitted to supplement the baseline methodology with other underwriting and screening methods.

The baseline methodology in proposed § 1041.9 rests on a residual income analysis—that is, an analysis of whether, given the consumer's projected income and major financial obligations, the consumer will have sufficient remaining (*i.e.,* residual) income to cover the payments on the proposed loan and still meet basic living expenses. The Bureau recognizes that in other markets and under other regulatory regimes financial capacity is more typically measured by establishing a maximum DTI ratio.[689] DTI tests generally rest on the assumption that so long as a consumer's debt burden does not exceed a certain threshold percentage of the consumer's income, the remaining share of income will be sufficient for consumer to be able to meet non-debt obligations and other expenses. However, for low- and moderate-income consumers, that assumption is less likely to be true: A DTI ratio that might seem quite reasonable for the "average" consumer can be quite unmanageable for a consumer at the lower end of the income spectrum and the higher end of the debt burden range.[690] Ultimately, whether a particular loan is affordable will depend upon how much money the consumer will have left after paying existing obligations and whether that amount is sufficient to cover the proposed new obligation while still meeting basic living expenses.

In addition, in contrast with other markets in which there are long-established norms for DTI levels that are consistent with sustainable indebtedness, the Bureau does not believe that there exist analogous norms for sustainable DTI levels across the wide range of terms and repayment structures used for covered longer-term loans. Thus, the Bureau believes that residual income is a more direct test of ability to pay than DTI and a more appropriate test with respect to the types of products covered in this rulemaking and the types of consumers to whom these loans are made.

The Bureau has designed the residual income methodology requirements specified in proposed §§ 1041.9 and 1041.10 in an effort to ensure that ability-to-repay determinations can be made through scalable underwriting models. The Bureau is proposing that the most critical inputs into the determination rest on documentation but the Bureau's proposed methodology allows for various means of documenting major financial obligations and also establishes alternatives to documentation where appropriate. It recognizes that rent, in particular, often cannot be readily documented and therefore allows for estimation of rental expense. See the section-by-section analysis of § 1041.9(c)(3)(ii)(D), below. The Bureau's proposed methodology also would not mandate verification or detailed analysis of every individual consumer expenditure. The Bureau believes that such detailed analysis may not be the only method to prevent unaffordable loans and is concerned that it would substantially increase costs to lenders and borrowers. See the discussion of basic living expenses, below.

Finally, the Bureau's proposed methodology does not dictate a formulaic answer to whether, in a particular case, a consumer's residual income is sufficient to make a particular loan affordable. Instead, the proposed methodology allows lenders to exercise discretion in arriving at a reasonable determination with respect to that question. Because this type of underwriting is so different from what many lenders currently engage in, the Bureau is particularly conscious of the need to leave room for lenders to innovate and refine their methods over time, including by building automated systems to assess a consumer's ability to repay so long as the basic elements are taken into account.

Proposed § 1041.9 outlines the methodology for assessing the consumer's residual income as part of the assessment of ability to repay. Proposed § 1041.9(a) would set forth definitions used throughout proposed §§ 1041.9 and 1041.10. Proposed § 1041.9(b) would establish the requirement for a lender to determine that a consumer will have the ability to repay a covered longer-term loan and would set forth minimum standards for a reasonable determination that a consumer will have the ability to repay a covered longer-term loan. The standards in proposed § 1041.9(b) generally require a lender to determine that the consumer's income will be sufficient for the consumer to make payments under a covered longer-term loan while accounting for the consumer's payments for major financial obligations and the consumer's basic living expenses. Proposed § 1041.9(c) would establish standards for verification and projections of a consumer's income and major financial obligations on which the lender would be required to base its determination under proposed § 1041.9(b). Section 1041.10 imposes certain additional presumptions, prohibitions, and requirements where the consumer's reborrowing while or shortly after having a prior loan outstanding suggests that the prior loan was not affordable for the consumer, so that the consumer may have particular difficulty in repaying a new covered longer-term loan with similar repayment terms.

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[689] For example, DTI is an important component of the Bureau's ability to repay mortgage regulation in 12 CFR 1026.43. It is a factor that a creditor must consider in determining a consumer's ability to repay and also a component of the standards that a residential mortgage loan must meet to be a qualified mortgage under that regulation.

[690] For example, under the Bureau's ability-to-repay requirements for residential mortgage loans, a qualified mortgage has a DTI ratio of 43 percent or less. But for a consumer with a DTI ratio of 43 percent and low income, the 57 percent of income not consumed by payments under debt obligations may not indicate the same capacity to handle a new loan payment of a given dollar amount, compared to consumers with the same DTI and higher income. That is especially true if the low income consumer also faces significant non-debt expenses, such as high rent payments, that consume significant portions of the remaining 57 percent of her income.

As an alternative to the proposed ability-to-repay requirement, the Bureau has considered proposing a disclosure remedy consisting of requiring lenders to provide disclosures to borrowers warning them of the costs and risks of default and other harms that are associated with taking out covered longer-term loans. However, the Bureau believes that such a disclosure remedy would be significantly less effective in preventing the harms described above, for three reasons. First, disclosures do not address the underlying incentives observed in the markets for covered longer-term loans, *i.e.*, that lenders are able to make loans profitably even when a very large share of borrowers default. Second, empirical analysis of the impacts of disclosures for payday borrowers, including the Bureau's own analysis of the Texas disclosure requirement impacts, showed that disclosures have only modest impact overall on borrowing patterns. *See* section-by-section analysis for proposed § 1041.5. The Bureau believes these findings provide insights into the challenges of informing borrowers in difficult financial circumstances about risks of borrowing, and therefore are relevant to the markets for covered longer-term loans. Third, as discussed in part VI, the Bureau believes that behavioral factors make it likely that disclosures to consumers taking out covered longer-term loans would be ineffective in warning consumers of the risks and preventing the harms that the Bureau seeks to address with the proposal. Due to the potential for tunneling in their decision-making and general optimism bias, as discussed in more detail in Market Concerns—Longer-Term Loans, consumers are likely to dismiss warnings of possible negative outcomes as not applying to them, and to not focus on disclosures of the possible harms associated with an outcome, default, that they do not anticipate experiencing themselves. To the extent the borrowers have thought about the likelihood that they themselves will default on a loan, a general warning about how often people default is unlikely to cause them to revise their own expectations about the chances they themselves will default.

The Bureau requests comment on all aspects of the appropriateness of the proposed approach. For example, the Bureau requests comment on whether a simple prohibition on making covered longer-term loans without determining ability to repay, without specifying the elements of a minimum baseline methodology, would provide adequate protection to consumers and clarity to industry about what would constitute compliance. Similarly, the Bureau requests comment on the adequacy of a less prescriptive requirement for lenders to "consider" specified factors, such as payment amount under a covered longer-term loan, income, debt service payments, and borrowing history, rather than a requirement to determine that residual income is sufficient. (Such an approach could be similar to that of the Bureau's ability-to-repay requirements for residential mortgage loans.) Specifically, the Bureau requests comment on whether there currently exist sufficient norms around the levels of such factors that are and are not consistent with a consumer's ability to repay, such that a requirement for a lender to "consider" such factors would provide adequate consumer protection, as well as adequate certainty for lenders regarding what determinations of ability to repay would and would not reflect sufficient consideration of those factors.

Also during outreach, some stakeholders suggested that the Bureau should adopt underwriting rules of thumb—for example, a maximum payment-to-income ratio—to either presumptively or conclusively demonstrate compliance with the rule. The Bureau solicits comment on whether the Bureau should define such rules of thumb and, if so, what metrics should be included in a final rule and what significance should be given to such metrics.

9(a) Definitions

Proposed § 1041.9(a) would provide definitions of several terms used in § 1041.9 in assessing the consumer's financial situation and proposed § 1041.10 in assessing consumers' borrowing history before determining whether a consumer has the ability to repay a new covered longer-term loan. In particular, proposed § 1041.9(a) includes definitions for various categories of income and expenses that are used in § 1041.9(b), which would establish the methodology that would generally be required for assessing consumers' ability to repay covered longer-term loans. The substantive requirements for making the calculations for each category of income and expenses, as well as the overall determination of a consumer's ability to repay, are provided in § 1041.9(b) and (c), and in their respective commentary. These proposed definitions are discussed in detail below.

9(a)(1) Basic Living Expenses

Proposed § 1041.9(a)(1) would define the basic living expenses component of the ability-to-repay determination that would be required in § 1041.9(b). It would define basic living expenses as expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Section 1041.9(b) would require the lender to reasonably determine a dollar amount that is sufficiently large so that the consumer would likely be able to make the loan payments and meet basic living expenses without having to default on major financial obligations or having to rely on new consumer credit during the applicable period.

Accordingly, the proposed definition of basic living expenses is a principle-based definition and does not provide a comprehensive list of the expenses for which a lender must account. Proposed comment 9(a)(1)-1 provides illustrative examples of expenses that would be covered by the definition. It provides that food and utilities are examples of goods and services that are necessary for maintaining health and welfare, and that transportation to and from a place of employment and daycare for dependent children, if applicable, are examples of goods and services that are necessary for maintaining the ability to produce income.

The Bureau recognizes that provision of a principle-based definition leaves some ambiguity about, for example, what types and amounts of goods and services are "necessary" for the stated purposes. Lenders would have flexibility in how they determine dollar amounts that meet the proposed definition, provided that they do not rely on amounts that are so low that they are not reasonable for consumers to pay for the types and level of expenses in the definition.

The Bureau's proposed methodology also would not mandate verification or detailed analysis of every individual consumer expenditure. In contrast to major financial obligations (see below), a consumer's recent expenditures may not necessarily reflect the amounts a consumer needs for basic living expenses during the term of a prospective loan, and the Bureau is concerned that such a requirement could substantially increase costs for lenders and consumers while adding little protection for consumers.

The Bureau solicits comment on its principle-based approach to defining basic living expenses, including whether limitation of the definition to "necessary" expenses is appropriate, and whether an alternative, more prescriptive approach would be preferable. For example, the Bureau solicits comment on whether the definition should include, rather than expenses of the types and in amounts that are "necessary" for the purposes specified in the proposed definition, expenses of the types that are likely to recur through the term of the loan and in amounts below which a consumer cannot realistically reduce them. The Bureau also solicits comment on whether there are standards used in other contexts that could be relied upon by the Bureau. For example, the Bureau is aware that the Internal Revenue Service and bankruptcy courts have their own respective standards for calculating amounts an individual needs for expenses while making payments toward a delinquent tax liability or under a bankruptcy-related repayment plan.

9(a)(2) Major Financial Obligations

Proposed § 1041.9(a)(2) would define the major financial obligations component of the ability-to-repay determination specified in § 1041.9(b). Section 1041.9(b) would generally require a lender to determine that a consumer will have sufficient residual income, which is net income after subtracting amounts already committed for making payments for major financial obligations, to make payments under a prospective covered longer-term loan and to meet basic living expenses. Payments for major financial obligations would be subject to the consumer statement and verification evidence provisions under proposed § 1041.9(c)(3).

Specifically, proposed § 1041.9(a)(2) would define the term to mean a consumer's housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations. Comment 9(a)(2)-1 would further clarify that housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. It would provide that minimum payments under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered loan payments, and minimum required credit card payments.

Expenses that the Bureau has included in the proposed definition are expenses that are typically recurring, that can be significant in the amount of a consumer's income that they consume, and that a consumer has little or no ability to change, reduce, or eliminate in the short run, relative to their levels up until application for a covered longer-term loan. The Bureau believes that the extent to which a particular consumer's net income is already committed to making such payments is highly relevant to determining whether that consumer has the ability to make payments under a prospective covered longer-term loan. As a result, the Bureau believes that a lender should be required to inquire about such payments, that they should be subject to verification for accuracy and completeness to the extent feasible, and that a lender should not be permitted to rely on consumer income already committed to such payments in determining a consumer's ability to repay. Expenses included in the proposed definition are roughly analogous to those included in total monthly debt obligations for calculating monthly debt-to-income ratio and monthly residual income under the Bureau's ability-to-repay requirements for certain residential mortgage loans. (*See* 12 CFR 1026.43(c)(7)(i)(A.))

The Bureau has adjusted its approach to major financial obligations based on feedback from SERs and other industry stakeholders on the Small Business Review Panel Outline. In the SBREFA process, the Bureau stated that it was considering including within the category of major financial obligations "other legally required payments," such as alimony, and that the Bureau had considered an alternative approach that would have included utility payments and regular medical expenses. However, the Bureau now believes that it would be unduly burdensome to require lenders to make individualized projections of a consumer's utility or medical expenses. With respect to alimony, the Bureau believes that relatively few consumers seeking covered loans have readily verifiable alimony obligations and that, accordingly, inquiring about alimony obligations would impose unnecessary burden. The Bureau also is not including a category of "other legally required payments" because the Bureau believes that category, which was included in the Small Business Review Panel Outline, would leave too much ambiguity about what other payments are covered. For further discussion of burden on small businesses associated with verification requirements, see the section-by-section analysis of § 1041.9(c)(3), below.

The Bureau invites comment on whether the items included in the proposed definition of major financial obligations are appropriate, whether other items should be included, and, if so, whether and how the items should be subject to verification. For example, the Bureau invites comment on whether there are other obligations that are typically recurring, significant, and not changeable by the consumer, such as, for example, alimony, daycare commitments, health insurance premiums (other than premiums deducted from a consumer's paycheck, which are already excluded from the proposed definition of net income), or unavoidable medical care expenses. The Bureau likewise invites comment on whether there are payments to which a consumer may be contractually obligated, such as payments or portions of payments under contracts for telecommunication services, that a consumer is unable to reduce from their amounts as of consummation, such that the amounts should be included in the definition of major financial obligations. The Bureau also invites comment on the inclusion in the proposed definition of delinquent amounts due, such as on the practicality of asking consumers about delinquent amounts due on major financial obligations, of comparing stated amounts to any delinquent amounts that may be included in verification evidence (*e.g.,* in a national consumer report), and of accounting for such amounts in projecting a consumer's residual income during the term of the prospective loan. The Bureau also invites comment on whether the Bureau should specify additional rules for addressing major financial obligations that are joint obligations of a consumer applying for a covered longer-term loan (and of a consumer who is not applying for the loan), or whether the provision in proposed § 1041.9(c)(1) allowing lenders to consider consumer explanations and other evidence is sufficient.

9(a)(3) National Consumer Report

Proposed § 1041.9(a)(3) would define national consumer report to mean a consumer report, as defined in section

603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p). Proposed § 1041.9(c)(3)(ii) would require a lender to obtain a national consumer report as verification evidence for a consumer's required payments under debt obligations and required payments under court- or government agency-ordered child support obligations. Reports that meet the proposed definition are often referred to informally as a credit report or credit history from one of the three major credit reporting agencies or bureaus. A national consumer report may be furnished to a lender from a consumer reporting agency that is not a nationwide consumer reporting agency, such as a consumer reporting agency that is a reseller.

9(a)(4) Net Income

Proposed § 1041.9(a)(4) would define the net income component of the ability-to-repay determination calculation specified in § 1041.9(b). Specifically, it would define the term as the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions that the consumer has directed the payer to deduct, but before deductions of any amounts for payments under a prospective covered longer-term loan or for any major financial obligation. Proposed § 1041.9(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a prospective covered longer-term loan and to meet basic living expenses. Section 1041.9(a)(6), discussed below, would define residual income as the sum of net income that the lender projects the consumer will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period. Net income would be subject to the consumer statement and verification evidence provisions under proposed § 1041.9(c)(3).

The proposed definition is similar to what is commonly referred to as "take-home pay" but is phrased broadly to apply to income received from employment, government benefits, or other sources. It would exclude virtually all amounts deducted by the payer of the income, whether deductions are required or voluntary, such as voluntary insurance premiums or union dues. The Bureau believes that the total dollar amount that a consumer actually receives after all such deductions is the amount that is most instructive in determining a consumer's ability to repay. Certain deductions (*e.g.*, taxes) are beyond the consumer's control. Other deductions may not be revocable, at least for a significant period of time, as a result of contractual obligations to which the consumer has entered. Even with respect to purely voluntary deductions, most consumers are unlikely to be able to reduce or eliminate such deductions, between consummation of a loan and the time when payments under the loan would begin to fall due. The Bureau also believes that the net amount a consumer actually receives after all such deductions is likely to be the amount most readily known to consumers applying for a covered longer-term loan (rather than, for example, periodic gross income) and is also the amount that is most readily verifiable by lenders through a variety of methods. The proposed definition would clarify, however, that net income is calculated before deductions of any amounts for payments under a prospective covered longer-term loan or for any major financial obligation. The Bureau proposes the clarification to prevent double counting any such amounts when making the ability-to-repay determination.

The Bureau invites comment on the proposed definition of net income and whether further guidance would be helpful.

9(a)(5) Payment Under the Covered Longer-Term Loan

Proposed § 1041.9(a)(5) would define payment under the covered longer-term loan, which is a component of the ability-to-repay determination calculation specified in § 1041.9(b). Proposed § 1041.9(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a covered longer-term loan and to meet basic living expenses. Specifically, the definition of payment under the covered longer-term loan in proposed § 1041.9(a)(5)(i) and (ii) would include all costs payable by the consumer at a particular time after consummation, regardless of how the costs are described in an agreement or whether they are payable to the lender or a third party. Proposed § 1041.9(a)(5)(iii) provides special rules for projecting payments under the covered loan on lines of credit for purposes of the ability-to-repay test, since actual payments for lines of credit may vary depending on usage.

Proposed § 1041.9(a)(5)(i) would apply to all covered longer-term loans. It would define payment under the covered longer-term loan broadly to mean the combined dollar amount payable by the consumer in connection with the covered loan at a particular time following consummation. Under proposed § 1041.9(b), the lender would be required to reasonably determine the payment amount under this proposed definition as of the time of consummation. The proposed definition would further provide that in calculating the payment under the covered longer-term loan, the lender must assume that the consumer has made preceding required payments and that the consumer has not taken any affirmative act to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered longer-term loan. Proposed § 1041.9(a)(5)(ii) would similarly apply to all covered longer-term loans and would clarify that payment under the covered loan includes all principal, interest, charges, and fees.

The Bureau believes that a broad definition, such as the one proposed, is necessary to capture the full dollar amount payable by the consumer in connection with the covered longer-term loan, including amounts for voluntary insurance or memberships and regardless of whether amounts are due to the lender or another person. It is the total dollar amount due at each particular time that is relevant to determining whether or not a consumer has the ability to repay the loan based on the consumer's projected net income and payments for major financial obligations. The amount of the payment is what is important, not whether the components of the payment include principal, interest, fees, insurance premiums, or other charges. The Bureau recognizes, however, that there is great variety in the repayment terms of covered longer-term loans, and that under the terms of some covered longer-term loans, a consumer may have options regarding how much the consumer must pay at any given time and that the consumer may in some cases be able to select a different payment option. The proposed definition would include any amount payable by a consumer in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule, or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered longer-term loan. Proposed comment 9(a)(5)(i) and 9(a)(5)(ii)-1 includes three examples applying the proposed definition to scenarios in which the payment under the covered longer-term loan includes several components, including voluntary fees owed to a person other than the lender, as well as scenarios in which the consumer has the option of making different payment amounts.

Proposed § 1041.9(a)(5)(iii) would include additional provisions for calculating the projected payment amount under a covered line of credit for purposes of assessing a consumer's ability to repay the loan. As explained in proposed comment 9(a)(5)(iii)-1, such rules are necessary because the amount and timing of the consumer's actual payments on a line of credit after consummation may depend on the consumer's utilization of the credit (*i.e.*, the amount the consumer has drawn down) or on amounts that the consumer has repaid prior to the payments in question. As a result, if the definition of payment under the covered longer-term loan did not specify assumptions about consumer utilization and repayment under a line of credit, there would be uncertainty as to the amounts and timing of payments to which the ability-to-repay requirement applies. Proposed § 1041.9(a)(5)(iii) therefore prescribes assumptions that a lender must make in calculating the payment under the covered longer-term loan. It would require the lender to assume that the consumer will utilize the full amount of credit under the covered longer-term loan as soon as the credit is available to the consumer, that the consumer will make only minimum required payments under the covered longer-term loan, and, if the terms of the covered longer-term loan would not provide for termination of access to the line of credit by a date certain and for full repayment of all amounts due by a subsequent date certain, that the consumer must repay any remaining balance in one payment on the date that is 180 days following the consummation date. The lender would then apply the ability-to-repay determination to that assumed repayment schedule.

The Bureau believes these assumptions about a consumer's utilization and repayment are important to ensure that the lender makes its ability-to-repay determination based on the most challenging loan payment that a consumer may face under the covered longer-term loan. They also reflect the likely borrowing and repayment behavior of many consumers who obtain covered loans with a line of credit. Such consumers are typically facing an immediate liquidity need and, in light of the relatively high cost of credit, would normally seek a line of credit approximating the amount of the need. Assuming the lender does not provide a line of credit well in excess of the consumer's need, the consumer is then likely to draw down the full amount of the line of credit shortly after consummation. Liquidity-constrained consumers may make only minimum required payments under a line of credit and, if the terms of the covered longer-term loan provide for an end date, may then face having to repay the outstanding balance in one payment at a time specified under the terms of the covered loan. It is such a payment that is likely to be the highest payment possible under the terms of the covered longer-term loan and therefore the payment for which a consumer is least likely to have the ability to repay. Indeed, as discussed above in Market Concerns—Longer-Term Loans, consumers very often refinance or reborrow when such a high payment falls due, even after successfully making a series of lower, often interest-only minimum payments. The lender would then apply the ability-to-repay determination to that assumed repayment schedule.

For any covered longer-term loan with a line of credit that does not provide for a date certain by which the outstanding balance must be repaid, the definition would require the lender to assume full repayment of the outstanding balance 180 days after consummation. It would ensure that lenders make the required ability-to-repay determination for an assumed repayment schedule that would result in full repayment of the loan and provide lenders with greater certainty as to how to comply with the requirements of § 1041.9.

The Bureau invites comment on the proposed definition of payment under the covered longer-term loan. Specifically, the Bureau invites comment on whether the provisions of proposed § 1041.9(a)(5) are sufficiently comprehensive and clear to allow for determination of a payment under the wide variety of terms that are available under covered longer-term loans, especially for lines of credit. The Bureau also invites comment on the proposed approach to lines of credit that do not provide for repayment by a date certain and whether an alternative approach would be more appropriate for purposes of assessing ability to repay.

9(a)(6) Residual Income

Proposed § 1041.9(a)(6) would define the residual income component of the ability-to-repay determination calculation specified in § 1041.9(b). Specifically, it would define the term as the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts must be based on verification evidence, as provided under § 1041.9(c). Proposed section 1041.9(b) would generally require a lender to determine that a consumer will have sufficient residual income to make payments under a covered longer-term loan and to meet basic living expenses.

The proposed definition would ensure that a lender's ability-to-repay determination cannot rely on the amount of a consumer's net income that, as of the time a prospective loan would be consummated, is already committed to pay for major financial obligations during the applicable period. For example, a consumer's net income may be greater than the amount of a loan payment, so that the lender successfully obtains the loan payment from a consumer's deposit account once the consumer's income is deposited into the account. But if the consumer is then left with insufficient funds to make payments for major financial obligations, such as a rent payment, then the consumer may be forced to choose between failing to pay rent when due, forgoing basic needs, or reborrowing.

9(b) Reasonable Determination Required

Proposed § 1041.9(b) would prohibit lenders from making covered longer-term loans without first making a reasonable determination that the consumer will have the ability to repay the loan according to its terms, unless the loans are made in accordance with § 1041.11 or § 1041.12. Specifically, § 1041.9(b)(1) requires lenders to make a reasonable determination of ability to repay before making a new covered longer-term loan, increasing the credit available under an existing loan, or before advancing additional credit under a covered line of credit if more than 180 days have expired since the last such determination. Proposed § 1041.9(b)(2) specifies minimum elements of a baseline methodology that would be required for determining a consumer's ability to repay, using a residual income analysis and an assessment of the consumer's prior borrowing history. It would require the assessment to be based on projections of the consumer's net income, major financial obligations, and basic living expenses that are made in accordance with proposed § 1041.9(c). It would require that, using such projections, the lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the loan and still meet basic living expenses during the term of the loan. It would further require that for a covered longer-term balloon-payment loan, a lender must conclude that the consumer, after making the highest payment under the loan, will continue to be able to meet major financial obligations as they fall due and meet basic living expenses for a period of 30 additional days. Finally, proposed § 1041.9(b)(2) would require that in situations in which the consumer's recent borrowing history suggests that she may have difficulty repaying a new loan as specified in proposed § 1041.10, a lender must make the additional determinations required by proposed § 1041.10 before extending credit.

9(b)(1)

Proposed § 1041.9(b)(1) would provide generally that, except as provided in 1041.11 or § 1041.12, a lender must not make a covered longer-term loan or increase the credit available under a covered longer-term loan unless the lender first makes a reasonable determination of ability to repay for the covered longer-term loan. The provision would also impose a requirement to determine a consumer's ability to repay before advancing additional funds under a covered longer-term loan that is a line of credit if such advance would occur more than 180 days after the date of a previous required determination.

Section 1041.9(b)(1)(i) would provide that a lender is not required to make the determination when it makes a covered longer-term loan under the conditions set forth in § 1041.11 or § 1041.12. The conditions that would apply under § 1041.11 and § 1041.12 provide alternative protections from the harms caused by covered longer-term loan payments that exceed a consumer's ability to repay, such that the Bureau is proposing to allow lenders to make such loans in accordance with the regulation without engaging in an ability-to-repay determination under §§ 1041.9 and 1041.10. (*See* the section-by-section analysis of §§ 1041.11 and 1041.12, below.)

The Bureau notes that proposed § 1041.9(b)(1) would require the ability-to-repay determination before a lender actually takes one of the triggering actions. The Bureau recognizes that lenders decline covered loan applications for a variety of reasons, including to prevent fraud, avoid possible losses, and to comply with State law or other regulatory requirements. Accordingly, the requirements of § 1041.9(b)(1) would not require a lender to make the ability-to-repay determination for every covered longer-term loan application it receives, but rather only before taking one of the enumerated actions with respect to a covered longer-term loan. Similarly, nothing in proposed § 1041.9(b)(1) would prohibit a lender from applying screening or underwriting approaches in addition to those required under § 1041.9(b) prior to making a covered longer-term loan.

Proposed § 1041.9(b)(1)(ii) would provide that for a covered longer-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a prior required determination, unless the lender first makes a new reasonable determination that the consumer will have the ability to repay the covered longer-term loan. Under a line of credit, a consumer typically can obtain advances up to the maximum available credit at the consumer's discretion, often long after the covered loan was consummated. Each time the consumer obtains an advance under a line of credit, the consumer becomes obligated to make a new payment or series of payments based on the terms of the covered loan. But when significant time has elapsed since the date of a lender's prior required determination, the facts on which the lender relied in determining the consumer's ability to repay may have deteriorated significantly. During the Bureau's outreach to industry, the Small Dollar Roundtable urged the Bureau to require a lender to periodically make a new reasonable determination of ability to repay in connection with a covered loan that is a line of credit. The Bureau believes that the proposed requirement to make a new determination of ability to repay for a line of credit 180 days following a prior required determination appropriately balances the burden on lenders and the protective benefit for consumers.

Reasonable Determination

Proposed § 1041.9(b) would require a lender to make a reasonable determination that a consumer will be able to repay a covered longer-term loan according to its terms. As discussed above and as reflected in the provisions of proposed § 1041.9(b), a consumer has the ability to repay a covered loan according to its terms only if the consumer is able to make all payments under the covered loan as they fall due while also making payments under the consumer's major financial obligations as they fall due and continuing to meet basic living expenses without, as a result of making payments under a covered loan, having to reborrow.

Proposed comment 9(b)-1 provides an overview of the baseline methodology that would be required as part of a reasonable determination of a consumer's ability to repay in §§ 1041.9(b)(2), 1041.9(c), and 1041.10 and under their associated commentary.

Proposed comment 9(b)-2 would identify standards for evaluating whether a lender's ability-to-repay determinations under proposed § 1041.9 are reasonable. It would clarify minimum requirements of a reasonable ability-to-repay determination; identify assumptions that, if relied upon by the lender, render a determination not reasonable; and establish that the overall performance of a lender's covered longer-term loans is evidence of whether the lender's determinations for those covered longer-term loans are reasonable.

The proposed standards would not impose bright line rules prohibiting covered longer-term loans based on fixed mathematical ratios or similar distinctions, and they are designed to apply to the wide variety among covered longer-term loans and lender business models. For many lenders and many loans, several aspects of the proposed standards will not be applicable at all. For example, a lender that does not make covered longer-term balloon-payment loans would not have to make the determination under proposed § 1041.9(b)(2)(ii), concerning a consumer's ability to meet basic living expenses over a 30-day period following the highest payment under these types of loans. Moreover, the Bureau does not anticipate that a lender would need to perform a manual analysis of each prospective loan to determine whether it meets all of the proposed standards. Instead, each lender would be required under proposed § 1041.18 to develop and implement policies and procedures for approving and making covered longer-term loans in compliance with the proposed standards and based on the types of covered longer-term loans that the lender makes. A lender would then apply its own policies and procedures to its underwriting decisions, which the Bureau anticipates could be largely automated for the majority of consumers and covered longer-term loans.

Minimum requirements. Proposed comment 9(b)-2.i would provide that for a lender's ability-to-repay determination to be reasonable, the lender must comply with applicable provisions in proposed § 1041.9. It also provides additional interpretation of what makes a determination reasonable. For example, it would note that the determination must include the applicable determinations provided in § 1041.9(b)(2), be based on reasonable projections of a consumer's net income and major financial obligations in accordance with § 1041.9(c), be based on reasonable estimates of a consumer's basic living expenses under § 1041.9(b), and appropriately account for the possibility of volatility in a consumer's income and basic living expenses during the term of the loan under § 1041.9(b)(2)(i). It would also have to be consistent with the lender's written policies and procedures required under § 1041.18(b).

Proposed comment 9(b)-2.i would also provide that to be reasonable, a lender's ability-to-repay determination must be grounded in reasonable inferences and conclusions in light of information the lender is required to obtain or consider. As discussed above, each lender would be required under proposed § 1041.18 to develop policies and procedures for approving and making covered longer-term loans in compliance with the proposal. The policies and procedures would specify the conclusions that the lender makes based on information it obtains, and lenders would then be able to largely automate application of those policies and procedures for most consumers. For example, proposed § 1041.9(c) would require a lender to obtain verification evidence for a consumer's net income and payments for major financial obligations, but it would provide for lender discretion in resolving any ambiguities in the verification evidence to project what the consumer's net income and payments for major financial obligations will be following consummation of the covered longer-term loan.

Finally, proposed comment 9(b)-2.i would provide that for a lender's ability-to-repay determination to be reasonable, the lender must appropriately account for information known by the lender, whether or not the lender is required to obtain the information under § 1041.9, that indicates that the consumer may not have the ability to repay a covered longer-term loan according to its terms. The provision would not require a lender to obtain information other than information specified in proposed § 1041.9. However, a lender might become aware of information that casts doubt on whether a particular consumer would have the ability to repay a particular prospective covered longer-term loan. For example, proposed § 1041.9 would not require a lender to inquire about a consumer's individual transportation or medical expenses, and the lender's ability-to-repay method might comply with the proposed requirement to estimate consumers' basic living expenses by factoring into the estimate of basic living expenses a normal allowance for expenses of this type. But if the lender learned that a particular consumer had a transportation or recurring medical expense dramatically in excess of an amount the lender used in estimating basic living expenses for consumers generally, proposed comment 9(b)-2.i would clarify that the lender could not simply ignore that fact. Instead, it would have to consider the transportation or medical expense and then reach a reasonable determination that the expense does not negate the lender's otherwise reasonable ability-to-repay determination.

The Bureau invites comment on the minimum requirements for making a reasonable determination of ability to repay, including whether additional specificity should be provided in the regulation text or in the commentary with respect to circumstances in which a lender is required to take into account information known by the lender.

Determinations that are not reasonable. Proposed comment 9(b)-2.ii would provide two examples of ability-to-repay determinations that are not reasonable. The first example is a determination that relies on an assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered longer-term loan, to make payments under major financial obligations, or to meet basic living expenses. The Bureau believes that a consumer whose net income would be sufficient to make payments under a prospective covered longer-term loan, to make payments under major financial obligations, and to meet basic living expenses during the applicable period only if the consumer supplements that net income by borrowing additional consumer credit is a consumer who, by definition, lacks the ability to repay the prospective covered longer-term loan. Although the Bureau believes this reasoning is clear, it is proposing the commentary example because some lenders have argued that the mere fact that a lender successfully secures repayment of the full amount due from a consumer's deposit account shows that the consumer had the ability to repay the loan, even if the consumer then immediately has to reborrow to meet the consumer's other obligations and expenses. Inclusion of the example in commentary would confirm that an ability-to-repay determination is not reasonable if it relies on an implicit assumption that a consumer will have the ability to repay a covered longer-term loan for the reason that the consumer will obtain further consumer credit to make payments under major financial obligations or to meet basic living expenses.

The second example in proposed comment 9(b)-2.ii of an ability-to-repay determination that is not reasonable is one that relies on an assumption that a consumer will accumulate savings while making one or more payments under a covered longer-term loan and that, because of such assumed future savings, will be able to make a subsequent loan payment under a covered longer-term loan. Like the prior comment, the Bureau is including this comment in an abundance of caution lest some lenders seek to justify a decision to make, for example, a multi-payment, interest-only loan with a balloon payment on the ground that during the interest-only period the consumer will be able to accumulate savings to cover the balloon payment when due. A consumer who finds it necessary to seek a covered longer-term loan typically does so because she has not been able to accumulate sufficient savings while meeting her existing obligations and expenses. As discussed in Market Concerns—Longer-Term Loans, above, the high incidence of reborrowing and refinancing coinciding with balloon payments under longer-term loans strongly suggests that consumers are not, in fact, able to accumulate sufficient savings while making lower payments to then be able to make a balloon payment. A projection that a consumer will accumulate savings in the future is purely speculative, and basing an ability-to-repay determination on such speculation presents an unacceptable risk of an erroneous determination. The Bureau therefore believes that basing a determination of a consumer's ability to repay on such speculative projections would not be reasonable.

The Bureau, invites comment on whether there are any circumstances under which basing an ability-to-repay determination for a covered longer-term loan on assumed future borrowing or assumed future accumulation of savings would be reasonable.

Performance of a lender's covered longer-term loans as evidence. In determining whether a lender has complied with the requirements of proposed § 1041.9, there is a threshold question of whether the lender has carried out the required procedural steps, for example by obtaining consumer statements and verification evidence, projecting net income and payments under major financial obligations, and making determinations about the sufficiency of a consumer's residual income. In some cases, a lender might have carried out these steps but still have violated § 1041.9 by making determinations that are facially unreasonable, such as if a lender's determinations assume that a consumer needs amounts to meet basic living expenses that are clearly insufficient for that purpose.

In other cases the reasonableness or unreasonableness of a lender's determinations might be less clear. Accordingly, proposed comment 9(b)-2.iii would provide that evidence of whether a lender's determinations of ability to repay are reasonable may include the extent to which the lender's determinations subject to § 1041.9 result in rates of delinquency, default, and reborrowing for covered longer-term loans, as well as how those rates compare to the rates of other lenders making similar covered longer-term loans to similarly situated consumers. As discussed above, the Bureau recognizes that the affordability of loan payments is not the only factor that affects whether a consumer repays a covered longer-term loan according to its terms without reborrowing. A particular consumer may obtain a covered longer-term loan with payments that are within the consumer's ability to repay at the time of consummation, but factors such as the consumer's continual opportunity to work, willingness to repay, and financial management may affect the performance of that consumer's loan. Similarly, a particular consumer may obtain a covered longer-term loan with payments that exceed the consumer's ability to repay at the time of consummation, but factors such as a lender's use of a leveraged payment mechanism, taking of vehicle security, and collection tactics, as well as the consumer's ability to access informal credit from friends or relatives, might result in repayment of the loan without reborrowing or other indicia of harm that are visible through observations of loan performance and reborrowing. However, if a lender's determinations subject to proposed § 1041.9 regularly result in rates of delinquency, default, or reborrowing that are significantly higher than those of other lenders making similar covered longer-term loans to similarly situated consumers, that fact is evidence that the lender may be systematically underestimating amounts that consumers generally need for basic living expenses, or is in some other way overestimating consumers' ability to repay.

Proposed comment 9(b)-2.iii would not mean that a lender's compliance with the requirements of § 1041.9 for a particular loan could be determined based on the performance of that loan. Nor would proposed comment 9(b)-2.iii mean that comparison of the performance of a lender's covered longer-term loans with the performance of covered longer-term loans of other lenders could be the sole basis for determining whether that lender's determinations of ability to repay comply or do not comply with the requirements of § 1041.9. For example, one lender may have default rates that are much lower than the default rates of other lenders because it uses aggressive collection tactics, not because its determinations of ability to repay are reasonable. Similarly, the fact that one lender's default rates are similar to the default rates of other lenders does not indicate that the lenders' determinations of ability to repay are reasonable; the similar rates could also result from the fact that the lenders' respective determinations of ability to repay are similarly unreasonable. The Bureau believes, however, that such comparisons will provide important evidence that, considered along with other evidence, would facilitate evaluation of whether a lender's ability-to-repay determinations are reasonable.

For example, a lender may use estimates for a consumer's basic living expenses that initially appear unrealistically low, but if the lender's determinations otherwise comply with the requirements of § 1041.9 and otherwise result in covered longer-term loan performance that is materially better than that of peer lenders, the covered longer-term loan performance may help show that the lender's determinations are reasonable. Similarly, an online lender might experience default rates significantly in excess of those of peer lenders, but other evidence may show that the lender followed policies and procedures similar to those used by other lenders and that the high default rate resulted from a high number of fraudulent applications. On the other hand, if consumers experience systematically worse rates of delinquency, default, and reborrowing on covered longer-term loans made by lender A, compared to the rates of other lenders making similar loans, that fact may be important evidence of whether that lender's estimates of basic living expenses are, in fact, unrealistically low and therefore whether the lender's ability-to-repay determinations are reasonable.

The Bureau invites comment on whether and, if so, how the performance of a lender's portfolio of covered longer-term loans should be factored in to an assessment of whether the lender has complied with its obligations under the rule, including whether the Bureau should specify thresholds which presumptively or conclusively establish compliance or non-compliance and, if so, how such thresholds should be determined.

Payments Under a Covered Longer-Term Loan

Proposed comment 9(b)-3 notes that a lender is responsible for calculating the timing and amount of all payments under the covered longer-term loan. The timing and amount of all loan payments under the covered longer-term loan are an essential component of the required reasonable determination of a consumer's ability to repay under proposed § 1041.9(b)(2)(i), (ii), and (iii). Calculation of the timing and amount of all payments under a covered longer-term loan is also necessary to determine which component determinations under proposed § 1041.9(b)(2)(i), (ii), and (iii) apply to a particular prospective covered longer-term loan. Proposed comment 9(b)-3 cross references the definition of payment under a covered longer-term loan in proposed § 1041.9(a)(5), which includes requirements and assumptions that apply to a lender's calculation of the amount and timing of all payments under a covered longer-term loan.

Basic Living Expenses

A lender's ability-to-repay determination under proposed § 1041.9(b) would be required to account for a consumer's need to meet basic living expenses during the applicable period while also making payments for major financial obligations and payments under a covered longer-term loan. As discussed above, § 1041.9(a)(1) would define basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. If a lender's ability-to-repay determination did not account for a consumer's need to meet basic living expenses, and instead merely determined that a consumer's net income is sufficient to make payments for major financial obligations and for the covered longer-term loan, the determination would greatly overestimate a consumer's ability to repay a covered longer-term loan and would be unreasonable. Doing so would be the equivalent of determining, under the Bureau's ability-to-repay rule for residential mortgage loans, that a consumer has the ability to repay a mortgage from income even if that mortgage would result in a debt-to-income ratio of 100 percent. The Bureau believes there would be nearly universal consensus that such a determination would be unreasonable.

However, the Bureau recognizes that in contrast with payments under most major financial obligations, which the Bureau believes a lender can usually ascertain and verify for each consumer without unreasonable burden, it would be extremely challenging to determine a complete and accurate itemization of each consumer's basic living expenses. Moreover, a consumer may have somewhat greater ability to reduce in the short-run some expenditures that do not meet the Bureau's proposed definition of major financial obligations. For example, a consumer may be able for a period of time to reduce commuting expenses by ride sharing.

Accordingly, the Bureau is not proposing to prescribe a particular method that a lender would be required to use for estimating an amount of funds that a consumer requires to meet basic living expenses for an applicable period. Instead, proposed comment 9(b)-4 would provide the principle that whether a lender's method complies with the § 1041.9 requirement for a lender to make a reasonable ability-to-repay determination depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

Proposed comment 9(b)-4 would provide a non-exhaustive list of methods that may be reasonable ways to estimate basic living expenses. The first method is to set minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer's income, location, and household size. This example is based on a method that several lenders have told the Bureau they currently use in determining whether a consumer will have the ability to repay a loan and is consistent with the recommendations of the Small Dollar Roundtable. The Bureau notes that the Bureau of Labor Statistics conducts a periodic survey of consumer expenditures which may be useful for this purpose. The Bureau invites comment on whether the example should identify consideration of a consumer's income, location, and household size as an important aspect of the method.

The second method is to obtain additional reliable information about a consumer's expenses other than the information required to be obtained under § 1041.9(c), to develop a reasonably accurate estimate of a consumer's basic living expenses. The example would not mean that a lender is required to obtain this information but would clarify that doing so may be one effective method of estimating a consumer's basic living expenses. The method described in the second example may be more convenient for smaller lenders or lenders with no experience working with statistically valid surveys of consumer expenses, as described in the first example.

The third example is any method that reliably predicts basic living expenses. The Bureau is proposing to include this broadly phrased example to clarify that lenders may use innovative and data-driven methods that reliably estimate consumers' basic living expenses, even if the methods are not as intuitive as the methods in the first two examples. The Bureau would expect to evaluate the reliability of such methods by taking into account the performance of the lender's covered longer-term loans, as discussed in proposed comment 9(b)-3.iii.

Proposed comment 9(b)-4 would provide a non-exhaustive list of unreasonable methods of determining basic living expenses. The first example is a method that assumes that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer's net income that is not required for payments for major financial obligations is available for loan payments. The second example is a method of setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered longer-term loans, have yielded high rates of default and reborrowing relative to rates of default and reborrowing of other lenders making covered longer-term loans to similarly situated consumers.

The Bureau solicits comment on all aspects of the proposed requirements for estimating basic living expenses, including the methods identified as reasonable or unreasonable, whether additional methods should be specified, or whether the Bureau should provide either a more prescriptive method for estimating basic living expenses or a safe harbor methodology (and, if so, what that methodology should be). The Bureau also solicits comment on whether lenders should be required to ask consumers to identify, on a written questionnaire that lists common types of basic living expenses, how much they typically spend on each type of expense. The Bureau further solicits comment on whether and how lenders should be required to verify the completeness and correctness of the amounts the consumer lists and how a lender should be required to determine how much of the identified or verified expenditures is necessary or, under the alternative approach to defining basic living expenses discussed above, is recurring and not realistically reducible during the term of the prospective loan.

9(b)(2)

Proposed § 1041.9(b)(2) would set forth the Bureau's specific proposed methodology for making a reasonable determination of a consumer's ability to pay a covered longer-term loan. Specifically, it would provide that a lender's determination of a consumer's ability to repay is reasonable only if, based on projections in accordance with § 1041.9(c), the lender reasonably makes the applicable determinations provided in §§ 1041.9(b)(2)(i) and (iii). Section 1041.9(b)(2)(i) would require an assessment of the sufficiency of the consumer's residual income during the term of the loan, while § 1041.9(b)(2)(ii) requires assessment of an additional period in light of the special harms associated with loans with balloon-payment structures.

Section 1041.9(b)(2)(iii) would require compliance with additional requirements in proposed § 1041.10 in situations in which the consumer's borrowing history suggests that he or she may have difficulty repaying additional credit.

9(b)(2)(i)

Proposed § 1041.9(b)(2)(i) would provide that for any covered longer-term loan subject to the ability-to-repay requirement of § 1041.9, a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of covered longer-term loan. As defined in proposed § 1041.9(a)(6) residual income is the amount of a consumer's net income during a period that is not already committed to payments under major financial obligations during the period. If the payments for a covered longer-term loan would consume so much of a consumer's residual income that the consumer would be unable to meet basic living expenses, then the consumer would likely suffer injury from default or reborrowing or suffer collateral harms from unaffordable payments.

In proposing § 1041.9(b)(2)(i) the Bureau recognizes that, even when lenders determine at the time of consummation that consumers will have the ability to repay a covered longer-term loan, some consumers may still face difficulty making payments under covered longer-term loans because of changes that occur after consummation. For example, some consumers would experience unforeseen decreases in income or increases in expenses that would leave them unable to repay their loans. Thus, the fact that a consumer ended up in default is not, in and of itself, evidence that the lender failed to make a reasonable assessment of the consumer's ability to repay ex ante. Rather, proposed § 1041.9(b)(2)(i) looks to the facts as reasonably knowable prior to consummation and would mean that a lender is prohibited from making a covered longer-term loan subject to § 1041.9 if there is not a reasonable basis at consummation for concluding that the consumer will be able to make payments under the covered longer-term loan while also meeting the consumer's major financial obligations and meeting basic living expenses.

While some consumers may have so little (or no) residual income as to be unable to afford any loan, for other consumers the ability to repay will depend on the amount and timing of the required repayments. Thus, even if a lender concludes that there is not a reasonable basis for believing that a consumer can pay a particular prospective loan, proposed § 1041.9(b)(2)(i) would not prevent a lender from making a different covered longer-term loan with more affordable payments to such a consumer, provided that the more affordable payments would not consume so much of a consumer's residual income that the consumer would be unable to meet basic living expenses and provided further that the alternative loan is consistent with applicable State law.

Applicable Period for Residual Income

As discussed above, under proposed § 1041.9(b)(2)(i) a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of the covered longer-term loan. To provide greater certainty, facilitate compliance, and reduce burden, the Bureau is proposing comment 9(b)(2)(i)-1.i to explain how lenders could comply with § 1041.9(b)(2)(i).

Proposed comment 9(b)(2)(i)-1 would provide that for a covered longer-term loan, a lender complies with the requirement in § 1041.9(b)(2)(i) if it reasonably determines that for the month with the highest sum of payments (if applicable) under the covered longer-term loan, the consumer's residual income will be sufficient for the consumer to make the payments and to meet basic living expenses during that month. The method of compliance in proposed comment 9(b)(2)(i)-1.i would allow a lender to make one determination using the sum of all payments due in the month, rather than having to make a separate determination for, for example, each payment period. For loans longer than 45 days, the Bureau believes that the particular number and amount of net income payments and payments for major financial obligations that will accrue following consummation and before a payment due date is less instructive for determining sufficiency of the consumer's residual income, compared to when a loan is less than 45 days. (See section-by-section analysis of proposed § 1041.5(b)(2), above.) Accordingly, proposed comment 9(b)(2)(i)-1.i would allow a lender to apply the determination (*i.e.*, that residual income for a period will be sufficient for the consumer to make prospective loan payments during the period while meeting basic living expenses during the period) to a monthly period. However, because some covered longer-term loans may have payment structures that cause higher payments, or a higher number of payments, to fall due within one month versus other months during the term of the covered longer-term loan, proposed comment 9(b)(2)(i)-1.i specifies that the determination applies to the month with the highest sum of payments, if applicable. If the same sum of payments would be due in each month, or if the highest sum of payments applies to more than one month, the lender could make the determination for any such month. Proposed comment 9(b)(2)(i)-1.i includes an example applying the method of compliance to a covered loan with six biweekly payments, the last of which is higher than the first five biweekly payments.

The Bureau believes that, in general, a lender's projection of a consumer's residual income in compliance with proposed § 1041.9(c) for a covered longer-term loan will not vary from payment period to payment period. Thus, if the consumer's projected residual income for the month with the highest sum of payments will be sufficient for the consumer to make those payments while also meeting basic living expenses during that month, then that fact is generally sufficient to infer that the same would be true for other months as well. Such an inference would not necessarily be supported, however, if, to reach a conclusion that the consumer will have sufficient residual income in the month with the highest sum of payments, the lender relies on a projected increase in the consumer's residual income during the term of the loan (*e.g.*, a projected spike in a consumer's net income coinciding with the month when the highest payment is due). In that case, even if the projected spike were itself reasonable, there would not necessarily be a reasonable basis to infer that the consumer would also have sufficient residual income in other months (*e.g.*, when the consumer's net income is projected to be lower) for the consumer to make the sum of lower payments due in that month. Accordingly, proposed comment 9(b)(2)(i)-1.i would clarify that the method of compliance it describes is not applicable if the lender's determination relies on a projected increase in the consumer's residual income during the term of the loan. In that case, to comply with proposed § 1041.9(b)(2)(i), the lender would be have to use some other method to determine that the consumer's residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of covered longer-term loan.

The Bureau invites comment on all aspects of its proposed applicable time periods for assessing residual income.

Sufficiency of Residual Income; Accounting for Volatility in Net Income and Basic Living Expenses

As discussed above, under proposed § 1041.9(b)(2)(i) a lender must reasonably conclude that the consumer's residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of the covered longer-term loan. Proposed comment 9(b)(2)(i)-2 would clarify what constitutes "sufficient" residual income for a covered longer-term loan.

For a covered longer-term loan, proposed comment 9(b)(2)(i)-2.i would provide that the determination of "sufficient" residual income requires a lender to reasonably account for the possibility of volatility in the consumer's residual income and basic living expenses over the term of the loan. It clarifies that reasonably accounting for volatility requires considering the length of the covered longer-term loan term because the longer the term of a covered longer-term loan, the greater the possibility that residual income could decrease or basic living expenses could increase at some point during the term of the covered longer-term loan, increasing the risk that the consumer's residual income will be insufficient at some point during the term of the covered longer-term loan.

Proposed comment 9(b)(2)(i)-2.i identifies two ways that a lender reasonably accounts for the possibility of volatility in a consumer's residual income or basic living expenses. First, it provides that a lender does so by reasonably determining an amount (*i.e.,* a "cushion") by which the consumer's residual income must exceed the sum of the loan payments under the covered longer-term loan and of the amount needed for basic living expenses. It clarifies that a cushion is reasonably determined if it is large enough so that a consumer would have sufficient residual income to make payments under the covered longer-term loan despite volatility in net income or basic living expenses experienced by similarly situated consumers during a similar period of time. Second, proposed comment 9(b)(2)(i)-2.i provides that a lender also reasonably accounts for the possibility of volatility in consumer income by reasonably determining that a particular consumer is unlikely to experience such volatility notwithstanding the experience of otherwise similarly situated consumers during a similar period of time, such as if a consumer has stable employment and receives a salary and sick leave and health insurance.

The provision in proposed comment 9(b)(2)(i)-2.i requiring a lender to account for volatility does not mean that a lender must provide a cushion that is so large that it could shield a consumer from extraordinary shocks in income or basic living expenses, such as those resulting from job loss or medical bills from catastrophic illness. But occasional reductions in hours (and resulting earnings) or occasional spikes in expenses (such as an occasional spike in a utility bill) are very much to be expected over the course of a longer-term loan.[691] Thus proposed comment 9(b)(2)(i)-2.i provides that for a covered longer-term loan, it is not reasonable to assume that the consumer has the ability to make all of the required payments under the loan if a consumer who experiences ordinary volatility in income or basic living expenses would not have sufficient residual income so that, after making loan payments under the covered longer-term loan, she would be able to meet basic living expenses. The Bureau's outreach found that that at least two lenders that currently undertake ability-to-repay determinations already impliedly or expressly consider volatility of consumer income and expenses in determining what loan payments a consumer can afford.

The Bureau invites comment on all aspects of its proposal for accounting for volatility in projected net income and basic living expenses, including whether lenders can reasonably account for volatility in income and basic living expenses and, if so, whether additional specificity should be provided as to how to do so. The Bureau also invites comment on whether there are other circumstances, other than the duration of a loan, that should affect how lenders account for volatility.

9(b)(2)(ii)

Proposed § 1041.9(b)(2)(ii) would provide that for a covered longer-term balloon-payment loan subject to the ability-to-repay requirement of § 1041.9, a lender must reasonably conclude that the consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the covered longer-term balloon-payment loan, and to meet basic living expenses for 30 days after having made the highest payment under the covered longer-term loan on its due date. Proposed comment 9(b)(2)(ii)-1 notes that a lender must include in its determination under § 1041.9(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with § 1041.9(c). Proposed comment 9(b)(2)(ii)-1 also includes an example of a covered longer-term loan for which a lender could not make a reasonable determination that the consumer will have the ability to repay under § 1041.9(b)(2)(ii).

The Bureau proposes to include the requirement in § 1041.9(b)(2)(ii) for covered longer-term balloon-payment loans because the Bureau's research has found that these loan structures are particularly likely to result in reborrowing around the time that a balloon payment is due.[692] When a covered longer-term loan's terms provide for repayment under a schedule that includes a payment that is much larger than the other payments, the fact that the consumer must repay so much or at one time makes it especially likely that the consumer will be left with insufficient funds to make subsequent payments under major financial obligations and to meet basic living expenses. The consumer may then end up falling behind on payments under major financial obligations, being unable to meet basic living expenses, or borrowing additional consumer credit. Such consumers may be particularly likely to borrow new consumer credit in the form of a new covered longer-term loan.

This shortfall in a consumer's funds is most likely to occur following the highest payment under the covered longer-term loan (which is typically but not necessarily the final payment) and before the consumer's subsequent receipt of significant income. However, depending on regularity of a consumer's income payments and payment amounts, the point within a consumer's monthly expense cycle when the problematic covered longer-term loan payment falls due, and the distribution of a consumer's expenses through the month, the resulting shortfall may not manifest until a consumer has attempted to meet all expenses in the consumer's monthly expense cycle. Indeed, as noted in Market Concerns—Short-Term Loans, many payday loan borrowers who repay a first loan and do not reborrow during the ensuing pay cycle (*i.e.,* within 14 days) nonetheless do find it necessary to reborrow before the end of the expense cycle (*i.e.,* within 30 days).

In the Small Business Review Panel Outline, the Bureau described a proposal to require lenders to determine that a consumer will have the ability to repay a covered short-term loan without needing to reborrow for 60 days, consistent with the its proposal in the same document to treat a loan taken within 60 days of having a prior covered short-term loan outstanding as part of the same sequence. Several consumer advocates have argued that consumers may be able to juggle expenses and financial obligations for a time, so that an unaffordable loan may not result in reborrowing until after a 30-day period. For the reasons discussed further above in the section-by-section analyses of § 1041.6, the Bureau is now proposing a 30-day period for both purposes.

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[691] *See generally* Diana Farrell & Fiona Greig, *Weathering Volatility: Big Data on the Financial Ups and Downs of U.S. Individuals* (2015), *https://www.jpmorganchase.com/content/dam/jpmorganchase/en/legacy/corporate/institute/document/54918-jpmc-institute-report-2015-aw5.pdf;* Anthony Hannagan & Jonathan Morduch, *Income Gains and Month-to-Month Income Volatility: Household Evidence from the US Financial Diaries* (2015), *http://www.usfinancialdiaries.org/paper-1.*

[692] *See* Market Concerns—Longer-Term Loans.

The Bureau believes that the incidence of reborrowing caused by balloon-payment loan structures would be somewhat ameliorated simply by determining that a consumer will have residual income during the term of the loan that exceeds the sum of covered longer-term loan payments plus an amount necessary to meet basic living expenses during that period. But if the loan payments consume all of a consumer's residual income during the period other than the amount needed to meet basic living expenses during the period, then the consumer will be left with insufficient funds to make payments under major financial obligations and meet basic living expenses after the end of that period, unless the consumer receives sufficient net income shortly after the end of that period and before the next set of expenses fall due. Often, though, the opposite is true: A lender schedules the due dates of loan payments under covered longer-term loans so that the loan payment due date coincides with dates of the consumer's receipts of income. This practice maximizes the probability that the lender will timely receive the payment under the covered longer-term loan, but it also means the term of the loan (as well as the relevant period for the lender's determination that the consumer's residual income will be sufficient under proposed § 1041.9(b)(2)(i)) ends on the date of the consumer's receipt of income, with the result that the time between the end of the loan term and the consumer's subsequent receipt of income is maximized.

Thus, even if a lender made a reasonable determination under proposed § 1041.9(b)(2)(i) that the consumer would have sufficient residual income during the loan term to make loan payments under the covered longer-term balloon-payment loan and meet basic living expenses during the period, there would remain a significant risk that, as a result of an unaffordable highest payment, the consumer would be forced to reborrow or suffer collateral harms from unaffordable payments. The example included in proposed comment 9(b)(2)(ii)-1 illustrates just such a result.

The Bureau invites comment on the necessity of the requirement in proposed § 1041.9(b)(2)(ii) to prevent consumer harms and on any alternatives that would adequately prevent consumer harm while reducing burden for lenders. The Bureau also invites comment on whether the 30-day period in proposed § 1041.9(b)(2)(ii) is the appropriate period of time to use or whether a shorter or longer period of time, such as the 60-day period described in the Small Business Review Panel Outline, would be appropriate. The Bureau also invites comment on whether the time period chosen should run from the date of the final payment, rather than the highest payment, in cases where the highest payment is other than the final payment.

9(b)(2)(iii)

Proposed § 1041.9(b)(2)(iii) would provide that for a covered longer-term loan for which a presumption of unaffordability applies under § 1041.10, the lender must determine that the requirements of proposed § 1041.10 are satisfied. As discussed below, proposed § 1041.10 would apply certain presumptions and requirements when the consumer's borrowing history indicates that he or she may have particular difficulty in repaying a new covered longer-term loan with certain payment amounts or structures.

9(c) Projecting Consumer Net Income and Payments for Major Financial Obligations

Proposed § 1041.9(c) provides requirements that would apply to a lender's projections of net income and major financial obligations, which in turn serve as the basis for the lender's reasonable determination of ability to repay. Specifically, it would establish requirements for obtaining information directly from a consumer as well as specified types of verification evidence. It would also provide requirements for reconciling ambiguities and inconsistencies in the information and verification evidence.

9(c)(1) General

As discussed above, § 1041.9(b)(2) would provide that a lender's determination of a consumer's ability to repay is reasonable only if the lender determines that the consumer will have sufficient residual income during the term of the loan to repay the loan and still meet basic living expenses. Proposed § 1041.9(b)(2) thus carries with it the requirement for a lender to make projections with respect to the consumer's net income and major financial obligations—the components of residual income—during the relevant period of time. Proposed § 1041.9(b)(2) further provides that to be reasonable such projections must be made in accordance with proposed § 1041.9(c).

Proposed § 1041.9(c)(1) would provide that for a lender's projection of the amount and timing of net income or payments for major financial obligations to be reasonable, the lender must obtain both a written statement from the consumer as provided for in proposed § 1041.9(c)(3)(i), and verification evidence as provided for in proposed § 1041.9(c)(3)(ii), each of which are discussed below. Proposed § 1041.9(c)(1) further provides that for a lender's projection of the amount and timing of net income or payments for major financial obligations to be reasonable it may be based on a consumer's statement of the amount and timing only to the extent the stated amounts and timing are consistent with the verification evidence.

The Bureau believes verification of consumers' net income and payments for major financial obligations is an important component of the reasonable ability-to-repay determination. Consumers seeking a loan may be in financial distress and inclined to overestimate net income or to underestimate payments under major financial obligations to improve their chances of being approved. Lenders have an incentive to encourage such misestimates to the extent that as a result consumers find it necessary to reborrow. This result is especially likely if a consumer perceives that, for any given loan amount, lenders offer only one-size-fits-all loan repayment structure and will not offer an alternative loan with payments that are within the consumer's ability to repay. An ability-to-repay determination that is based on unrealistic factual assumptions will yield unrealistic and unreliable results, leading to the consumer harms that the Bureau's proposal is intended to prevent.

Accordingly, proposed § 1041.9(c)(1) would permit a lender to base its projection of the amount and timing of a consumer's net income or payments under major financial obligations on a consumer's written statement of amounts and timing under § 1041.9(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence of the type specified in § 1041.9(c)(3)(ii). Proposed § 1041.9(c)(1) would further provide that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. The Bureau believes the proposed approach would appropriately ensure that the projections of a consumer's net income and payments for major financial obligations will generally be supported by objective, third-party documentation or other records.

However, the proposed approach also recognizes that reasonably available verification evidence may sometimes contain ambiguous, out-of-date, or missing information. For example, the net income of consumers who seek covered longer-term loans may have varied over a period preceding the prospective covered longer-term loans, such as for a consumer who is paid an hourly wage and whose work hours vary from week to week. In fact, a consumer is more likely to experience financial distress, which may be a consumer's reason for seeking a covered longer-term loan, immediately following a temporary decrease in net income from their more typical levels. As a result, a lender's compliance with proposed § 1041.9(c)(1) would often mean it must project a consumer's likely or typical level of net income during the term of the prospective covered longer-term loan, based in part on varying recent net income receipts shown in the verification evidence. Accordingly, the proposed approach would not require a lender to base its projections exclusively on the consumer's most recent net income receipt shown in the verification evidence. Instead, it allows the lender reasonable flexibility in the inferences the lender draws about, for example, a consumer's net income during the term of the covered longer-term loan, based on the consumer's net income payments shown in the verification evidence, including net income for periods earlier than the most recent net income receipt. At the same time, the proposed approach would not allow a lender to mechanically assume that a consumer's immediate past income as shown in the verification evidence will continue into the future if, for example, the lender has reason to believe that the consumer has been laid off or is no longer employed. As discussed above, proposed comment 9(b)(2)(i)-2 addresses the proposed requirement for a lender to reasonably account for the possibility of volatility in a consumer's residual income (and basic living expenses), as would occur for a consumer whose net income may vary from a lender's reasonable projection of net income in accordance with proposed 1041.9(c)(1).

In this regard, the proposed approach recognizes that a consumer's own statements, explanations, and other evidence are important components of a reliable projection of future net income and payments for major financial obligations. Proposed comment 9(c)(1)-1 includes several examples applying the proposed provisions to various scenarios, illustrating reliance on consumer statements to the extent they are consistent with verification evidence and how a lender may reasonably consider consumer explanations to resolve ambiguities in the verification evidence. It includes examples of when a major financial obligation in a consumer report is greater than the amount stated by the consumer and of when a major financial obligation stated by the consumer does not appear in the consumer report at all. The examples do not address compliance or noncompliance with the proposed requirement in § 1041.9(c)(3)(ii) for a lender to obtain a reliable records covering ''sufficient'' history of income payments.

The Bureau anticipates that lenders would develop policies and procedures, in accordance with proposed § 1041.18, for how they project consumer net income and payments for major financial obligations in compliance with proposed § 1041.9(c)(1) and that a lender's policies and procedures would reflect its business model and practices, including the particular methods it uses to obtain consumer statements and verification evidence. The Bureau believes that many lenders and vendors would develop methods of automating projections, so that for a typical consumer, relatively little labor would be required.

The Bureau invites comment on the proposed approach to verification and to making projections based upon verified evidence, including whether the Bureau should permit projections that vary from the most recent verification evidence and, if so, whether the Bureau should be more prescriptive with respect to the permissible range of such variances.

9(c)(2) Changes Not Supported by Verification Evidence

Proposed § 1041.9(c)(2) would provide an exception to the requirement in § 1041.9(c)(1) that projections must be consistent with the verification evidence that a lender would be required to obtain under proposed 1041.9(c)(3)(ii). As discussed below, the required verification evidence will normally consist of third-party documentation or other reliable records of recent transactions or of payment amounts. Proposed § 1041.9(c)(2) would permit a lender to project a net income amount that is higher than an amount that would otherwise be supported under § 1041.9(c)(1), or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under § 1041.9(c)(1), only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer's major financial obligation of the amount and timing of the new or changed net income or payment. The exception would accommodate situations in which a consumer's net income or payment for a major financial obligation will differ from the amount supportable by the verification evidence. For example, a consumer who has been unemployed for an extended period of time but who just accepted a new job may not be able to provide the type of verification evidence of net income generally required under proposed § 1041.9(c)(3)(ii)(A). Proposed § 1041.9(c)(2) would permit a lender to project a net income amount based on, for example, an offer letter from the new employer stating the consumer's wage, work hours per week, and frequency of pay. The lender would be required to retain the statement in accordance with proposed § 1041.18.

The Bureau invites comment as to whether lenders should be permitted to rely on such evidence in projecting residual income.

9(c)(3) Evidence of Net Income and Payments for Major Financial Obligations

9(c)(3)(i) Consumer Statements

Proposed § 1041.9(c)(3)(i) would require a lender to obtain a consumer's written statement of the amount and timing of the consumer's net income, as well as of the amount and timing of payments required for categories of the consumer's major financial obligations (*e.g.*, credit card payments, automobile loan payments, housing expense payments, child support payments, etc.). The lender would then use the statements as an input in projecting the consumer's net income and payments for major financial obligations during the term of the loan. The lender would also be required to retain the statements in accordance with proposed § 1041.18. As discussed above, the Bureau believes it is important to require lenders to obtain this information directly from consumers in addition to obtaining reasonably available verification evidence under proposed

§ 1041.9(c)(3)(ii) because the latter sources of information may sometimes contain ambiguous, out-of-date, or missing information. Accordingly, the Bureau believes that projections based on both sources of information will be more reliable than either one standing alone.

Proposed comment 9(c)(3)(i)-1 clarifies that a consumer's written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. It further clarifies that a lender complies with a requirement to obtain the consumer's statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under § 1041.9(b)(2). Proposed comment 9(c)(3)(i)-1 includes the example that a lender's receipt of a consumer's statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer's rent payments are due. Proposed § 1041.9(c)(3)(i) would not specify any particular form or even particular questions or particular words that a lender must use to obtain the required consumer statements.

The Bureau invites comment on whether to require a lender to obtain a written statement from the consumer with respect to the consumer's income and major financial obligations, including whether the Bureau should establish any procedural requirements with respect to securing such a statement and the weight that should be given to such a statement. The Bureau also invites comments on whether a written memorialization by the lender of a consumer's oral statement should not be considered sufficient.

9(c)(3)(ii) Verification Evidence

Proposed § 1041.9(c)(3)(ii) would require a lender to obtain verification evidence for the amounts and timing of the consumer's net income and payments for major financial obligations for a period of time prior to consummation. It would specify the type of verification evidence required for net income and each component of major financial obligations. The proposed requirements are intended to provide reasonable assurance that the lender's projections of a consumer's net income and payments for major financial obligations are based on accurate and objective information, while also allowing lenders to adopt innovative, automated, and less burdensome methods of compliance. A lender making a covered longer-term loan within 30 days of the borrower having an outstanding covered short-term loan or covered longer-term balloon-payment loan would also be, in certain circumstances, required under proposed § 1041.10 to obtain verification evidence for components of residual income that a consumer states have changed since obtaining the preceding loan or for certain prior loans relative to the components of residual income for the prior 30 days.

9(c)(3)(ii)(A)

Proposed § 1041.9(c)(3)(ii)(A) would specify that for a consumer's net income, the applicable verification evidence would be a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender's projection under § 1041.9(c)(1). It would not specify a minimum look-back period or number of net income payments for which the lender must obtain verification evidence. The Bureau believes that, generally, the term of a loan will affect the period of time for which a lender will need verification evidence in order reasonably to project the consumer's net income. However, the Bureau does not believe it is necessary or appropriate to require verification evidence covering a lookback period of a prescribed length. Rather, sufficiency of the history for which a lender obtains verification evidence may depend upon the term of the prospective covered longer-term loan and the consistency of the income shown in the verification evidence the lender initially obtains. For example, a lender's normal practice in making loans for six-month terms may be to obtain verification evidence showing the consumer's three most recent receipts of net income. But if there is significant variation in a particular consumer's three most recent receipts of net income, simply projecting income based on the highest of the three would generally not comply with proposed § 1041.9(c)(1). (See the example in proposed comment 9(c)(1)-D.) A lender's examination of additional receipts of consumer net income might show that the highest of the three most recent receipts of net income initially examined is in fact typical for that consumer and that the lower amounts were aberrational. In that case, the lender may be able to reasonably project income based on that highest of the three most recent amounts, for the reason that the combination of the initial and additional receipts of consumer net income the lender examines is sufficient to support the lender's projection of net income. On the other hand, for a consumer who recently started a new job and has received only one salary payment, verification evidence showing the amount and timing of the payment may be sufficient to support the lender's projection. Lenders would be required to develop and maintain policies and procedures for establishing the sufficient history of net income payments in verification evidence tailored to the covered longer-term loans they make, in accordance with proposed § 1041.18.

Proposed comment 9(c)(3)(ii)(A)-1 would clarify that a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. It would further clarify that a reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), or money services business check-cashing transactions showing the amount and date of a consumer's receipt of income.

The Bureau believes that the proposed requirement would be sufficiently flexible to provide lenders with multiple options for obtaining verification evidence for a consumer's net income. For example, a paper paystub would generally satisfy the requirement, as would a photograph of the paystub uploaded from a mobile phone to an online lender. In addition, the requirement would also be satisfied by use of a commercial service that collects payroll data from employers and provides it to creditors for purposes of verifying a consumer's employment and income. Proposed comment 9(c)(3)(ii)(A)-1 would also allow verification evidence in the form of electronic or paper bank account statements or records showing deposits into the account, as well as electronic or paper records of deposits onto a prepaid card or of check-cashing transactions. Data derived from such sources, such as from account data aggregator services that obtain and categorize consumer deposit account and other account transaction data, would also generally satisfy the requirement. During outreach, service providers informed the Bureau that they currently provide such services to lenders.

Several SERs expressed concern during the SBREFA process that the Bureau's approach to income verification described in the Small Business Review Panel Outline was too burdensome and inflexible. Several other lender representatives expressed similar concerns during the Bureau's outreach to industry. Many perceived that the Bureau would require outmoded or burdensome methods of obtaining verification evidence, such as always requiring a consumer to submit a paper paystub or transmit it by facsimile (fax) to a lender. Others expressed concern about the Bureau requiring income verification at all, stating that many consumers are paid in cash and therefore have no employer-generated records of income.

The Bureau's proposed approach is intended to respond to many of these concerns by providing for a wide range of methods for obtaining verification evidence for a consumer's net income, including electronic methods that can be securely automated through third-party vendors with a consumer's consent. In developing this proposal, Bureau staff met with dozens of lenders, nearly all of which stated they already use some method—though not necessarily the precise methods the Bureau is proposing—to verify consumers' income as a condition of making a covered longer-term loan. The Bureau's proposed approach thus accommodates most of the methods they described and that the Bureau is aware of from other research and outreach. It is also intended to provide some accommodation for making covered longer-term loans to many consumers who are paid in cash. For example, under the Bureau's proposed approach, a lender may be able to obtain verification evidence of net income for a consumer who is paid in cash by using deposit account records (or data derived from deposit account transactions), if the consumer deposits income payments into a deposit account. Lenders often require consumers to have deposit accounts as a condition of obtaining a covered longer-term loan, so the Bureau believes that lenders would be able to obtain verification evidence for many consumers who are paid in cash in this manner.

The Bureau recognizes that there are some consumers who receive a portion of their income in cash and also do not deposit their cash income into a deposit account or prepaid card account. For such consumers, a lender may not be able to obtain verification evidence for that portion of a consumer's net income, and therefore generally could not base its projections and ability-to-repay determinations on that portion of such consumers' income. The Bureau, however, does not believe it is appropriate to make an ability-to-repay determination for a covered longer-term loan based on income that cannot be reasonably substantiated through any verification evidence. When there is no verification evidence for a consumer's net income, the Bureau believes the risk is too great that projections of net income would be overstated and that payments under a covered longer-term loan consequently would exceed the consumer's ability to repay, resulting in the harms targeted by this proposal.

For similar reasons, the Bureau is not proposing to permit the use of predictive models designed to estimate a consumer's income or to validate the reasonableness of a consumer's statement of her income. Given the risks associated with unaffordable loan payments, the Bureau believes that such models—which the Bureau believes typically are used to estimate annual income—lack the precision required to reasonably project an individual consumer's net income for a short period of time.

The Bureau notes that it has received recommendations from the Small Dollar Roundtable, comprised of a number of lenders making loans the Bureau proposes to cover in this rulemaking and a number of consumer advocates, recommending that the Bureau require income verification as provided for above.

The Bureau invites comment on the types of verification evidence permitted by the proposed rule and what, if any, other types of verification evidence should be permitted, especially types of verification evidence that would be at least as objective and reliable as the types provided for in proposed § 1041.9(c)(3)(ii)(A) and comment 9(c)(3)(ii)(A)-1. For example, the Bureau is aware of service providers who are seeking to develop methods to verify a consumer's stated income based upon extrinsic data about the consumer or the area in which the consumer lives. The Bureau invites comment on the reliability of such methods, their ability to provide information that is sufficiently current and granular to address a consumer's stated income for a particular and short period of time, and, if they are able to do so, whether income amounts determined under such methods should be a permissible as a form of verification evidence. The Bureau also invites comments on whether the requirements for verification evidence should be relaxed for a consumer whose principal income is documented but who reports some amount of supplemental cash income and, if so, what approach would be appropriate to guard against the risk of consumers overstating their income and obtaining an unaffordable loan.

9(c)(3)(ii)(B)

Proposed § 1041.9(c)(3)(ii)(B) would specify that for a consumer's required payments under debt obligations, the applicable verification evidence would be a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available. The Bureau believes that most typical consumer debt obligations other than covered loans would appear in a national consumer report. Many covered loans are not included in reports generated by the national consumer reporting agencies, so the lender would also be required to obtain, as verification evidence, a consumer report from a designated reporting system. As discussed above, § 1041.9(c)(1) would permit a lender to base its projections on consumer statements of amounts and timing of payments for major financial obligations (including debt obligations) only to the extent the statements are consistent with the verification evidence. Proposed comment 9(c)(1)-1 includes examples applying that proposed requirement in scenarios when a major financial obligation shown in the verification evidence is greater than the amount stated by the consumer and of when a major financial obligation stated by the consumer does not appear in the verification evidence at all.

Proposed comment 9(c)(3)(ii)(B)-1 would clarify that the amount and timing of a payment required under a debt obligation are the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule. The Bureau anticipates that in some cases, the national consumer report the lender obtains will not include a particular debt obligation stated by the consumer, or that the national consumer report may include, for example, the payment amount under the debt obligation but not the timing of the payment. Similar anomalies could occur with covered loans and a consumer report obtained from a designated reporting system. To the extent the national consumer report and consumer report from a designated reporting system omit information for a payment under a debt obligation stated by the consumer, the lender would simply base its projections on the amount and timing stated by the consumer.

The Bureau notes that proposed § 1041.9(c)(3)(ii)(B) does not require a lender to obtain a credit report unless the lender is otherwise prepared to make a loan to a particular consumer. Because obtaining a credit report will add some cost, the Bureau expects that lenders will order such reports only after determining that the consumer otherwise satisfies the ability-to-repay test so as to avoid incurring these costs for applicants who would be declined without regard to the contents of the credit report. For the reasons previously discussed, the Bureau believes that verification evidence is critical to ensuring that consumers in fact have the ability to repay a loan, and that therefore the costs are justified to achieve the objectives of the proposal.

The Bureau invites comment on whether to require lenders to obtain credit reports from a national credit reporting agency and from a registered information system. In particular, and in accordance with the recommendation of the Small Business Review Panel, the Bureau invites comment on ways of reducing the operational burden for small businesses of verifying consumers' payments under major financial obligations.

9(c)(3)(ii)(C)

Proposed § 1041.9(c)(3)(ii)(C) would specify that for a consumer's required payments under court- or government agency-ordered child support obligations, the applicable verification evidence would be a national consumer report, which also serves as verification evidence for a consumer's required payments under debt obligations, in accordance with proposed § 1041.9(c)(3)(ii)(B). The Bureau anticipates that some required payments under court- or government agency-ordered child support obligations will not appear in a national consumer report. To the extent the national consumer report omits information for a required payment, the lender could simply base its projections on the amount and timing stated by the consumer, if any. The Bureau intends this clarification to address concerns from some lenders, including from SERs, that a requirement to obtain verification evidence for payments under court- or government agency-ordered child support obligations from sources other than a national consumer report would be onerous and create uncertainty.

9(c)(3)(ii)(D)

Proposed § 1041.9(c)(3)(ii)(D) would specify that for a consumer's housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained by the lender), the applicable verification evidence would be either a reliable transaction record (or records) of recent housing expense payments or a lease, or an amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer.

Proposed comment 9(c)(3)(ii)(D)-1 explains that the proposed provision means a lender would have three methods that it could choose from for complying with the requirement to obtain verification evidence for a consumer's housing expense. Proposed comment 9(c)(3)(ii)(D)-1.i explains that under the first method, which could be used for a consumer whose housing expense is a mortgage payment, the lender may obtain a national consumer report that includes the mortgage payment. A lender would be required to obtain a national consumer report as verification evidence of a consumer's payments under debt obligations generally, pursuant to § 1041.9(c)(3)(ii)(B). A lender's compliance with that requirement would satisfy the requirement in proposed § 1041.9(c)(3)(ii)(D), provided the consumer's housing expense is a mortgage payment and that mortgage payment appears in the national consumer report the lender obtains.

Proposed comment 9(c)(3)(ii)(D)-1.ii explains that the second method is for the lender to obtain a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. It clarifies that for purposes of this method, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer. This method mirrors options a lender would have for obtaining verification evidence for net income. Accordingly, data derived from a record of depository account transactions or of prepaid account transactions, such as data from account data aggregator services that obtain and categorize consumer deposit account and other account transaction data, would also generally satisfy the requirement. Bureau staff have met with service providers that state that they currently provide services to lenders and are typically able to identify, for example, how much a particular consumer expends on housing expense as well as other categories of expenses.

Proposed comment 9(c)(3)(ii)(D)-1.iii explains that the third method is for a lender to use an amount determined under a reliable method of estimating a consumer's share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. Proposed comment 9(c)(3)(ii)(D)-1.iii provides, as an example, that a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (*e.g.,* in the same census tract) where the consumer resides. It provides that, alternatively, a lender may estimate individual or household housing expense based on housing expense and other data (*e.g.,* residence location) reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers' shares of housing expense. It further explains that a lender may estimate a consumer's share of household expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

Several SERs expressed concern during the SBREFA process that the Bureau's approach to housing expense verification described in the Small Business Review Panel Outline was burdensome and impracticable for many consumers and lenders. Several lender representatives expressed similar concerns during the Bureau's outreach to industry. The Small Business Review Panel Outline referred to lender verification of a consumer's rent or mortgage payment using, for example, receipts, cancelled checks, a copy of a lease, and bank account records. But some SERs and other lender representatives stated many consumers would not have these types of documents readily available. Few consumers receive receipts or cancelled checks for rent or mortgage payments, they stated, and bank account statements may simply state the check number used to make a payment, providing no way of confirming the purpose or nature of the payment. Consumers with a lease would not typically have a copy of the lease with them when applying for a covered loan, they stated, and subsequently locating and transmitting or delivering a copy of the lease to a lender would be unduly burdensome, if not impracticable, for both consumers and lenders.

The Bureau believes that many consumers would have paper or electronic records that they could provide to a lender to establish their housing expense. In addition, as discussed above, information presented to the Bureau during outreach suggests that data aggregator services may be able to electronically and securely obtain and categorize, with a consumer's consent, the consumer's deposit account or other account transaction data to reliably identify housing expenses payments and other categories of expenses.

Nonetheless, the Bureau intends its proposal to be responsive to these concerns by providing lenders with multiple options for obtaining verification evidence for a consumer's housing expense, including by using estimates based on the housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loans. The Bureau's proposal also is intended to facilitate automation of the methods of obtaining the verification evidence, making projections of a consumer's housing expense, and calculating the amounts for an ability-to-repay determination, such as residual income.

A related concern raised by some SERs is that a consumer may be the person legally obligated to make a rent or mortgage payment but may receive contributions toward it from other household members, so that the payment the consumer makes, even if the consumer can produce a record of it, is much greater than the consumer's own housing expense. Similarly, a consumer may make payments in cash to another person, who then makes the payment to a landlord or mortgage servicer covering the housing expenses of several residents. During outreach with industry, one lender stated that many of its consumers would find requests for documentation of housing expense to be especially intrusive or offensive, especially consumers with informal arrangements to pay rent for a room in someone else's home.

To address these concerns, the Bureau is proposing the option of estimating a consumer's housing expense based on the individual or apportioned household housing expenses of similarly situated consumers with households in the locality. The Bureau believes the proposed approach would address the concerns raised by SERs and other lenders while also reasonably accounting for the portion of a consumer's net income that is consumed by housing expenses and, therefore, not available for payments under a prospective loan. The Bureau notes that if the method the lender uses to obtain verification evidence of housing expense for a consumer—including the estimated method—indicates a higher housing expense amount than the amount in the consumer's statement under proposed § 1041.9(c)(3)(i), then proposed § 1041.9(c)(1) would generally require a lender to rely on the higher amount indicated by the verification evidence. Accordingly, a lender may prefer use one of the other two methods for obtaining verification evidence, especially if doing so would result in verification evidence indicating a housing expense equal to that in the consumer's written statement of housing expense.

The Bureau recognizes that in some cases the consumer's actual housing expense may be lower than the estimation methodology would suggest but may not be verifiable through documentation. For example, some consumers may live for a period of time rent-free with a friend or relative. However, the Bureau does not believe it is possible to accommodate such situations without permitting lenders to rely solely on the consumer's statement of housing expenses, and for the reasons previously discussed the Bureau believes that doing so would jeopardize the objectives of the proposal. The Bureau notes that the approach it is proposing is consistent with the recommendation of the Small Dollar Roundtable which recommended that the Bureau permit rent to be verified through a "geographic market-specific . . .valid, reliable proxy."

The Bureau invites comment on whether the proposed methods of obtaining verification evidence for housing expense are appropriate and adequate.

§ 1041.10 Additional Limitations on Lending—Covered Longer-Term Loans

Background

Proposed § 1041.10 would augment the basic ability-to-repay determination required by proposed § 1041.9 in circumstances in which the consumer's recent borrowing history or current difficulty repaying an outstanding loan provides important evidence with respect to the consumer's financial capacity to afford a new covered longer-term loan. In these circumstances, proposed § 1041.10 would require the lender to factor this evidence into the ability-to-repay determination. The Bureau proposes the additional requirements in § 1041.10 for the same basic reason that it proposes § 1041.9: to prevent the unfair and abusive practice identified in proposed § 1041.8, and the consumer injury that results from it. The Bureau believes that these additional requirements may be needed in circumstances in which proposed § 1041.9 alone may not be sufficient to prevent a lender from making a covered longer-term loan that the consumer might not have the ability to repay.

Proposed § 1041.10 would generally impose a presumption of unaffordability on continued lending where evidence suggests that the prior or outstanding loan was not affordable for the consumer, such that the consumer may have particular difficulty repaying a new covered longer-term loan. Specifically, such presumptions would apply when a consumer seeks a covered longer-term loan during the term of a covered short-term loan made under proposed § 1041.5 or a covered longer-term balloon-payment loan made under proposed § 1041.9 and for 30 days thereafter, unless payments on the new covered longer-term loan would meet certain conditions, or seeks to take out a covered longer-term loan when there are indicia that an outstanding loan with the same lender or its affiliate is unaffordable for the consumer. Proposed § 1041.10 would also prohibit lenders from making a covered longer-term loan under proposed § 1041.9 during the term of and shortly following a covered short-term loan made by the same lender or its affiliate under proposed § 1041.7.

The Bureau is proposing a presumption of unaffordability in situations in which the fact that the consumer is seeking to take out a new covered longer-term loan during the term of, or in certain circumstances shortly after repaying, a prior loan with similar payments suggests that the new loan, like the prior loan, will exceed the consumer's ability to repay. As discussed above in the section-by-section analysis of proposed § 1041.6, the Bureau believes that the most common explanation when a consumer returns to borrow within 30 days of a prior covered short-term loan is that the prior loan was unaffordable. As discussed further below, the Bureau believes based on its research that it makes sense to apply the same presumption where a borrower returns to borrow within 30 days of a prior covered long-term balloon-payment loan. And as discussed further below, the Bureau believes it is appropriate to apply a presumption where there are indicia that the borrower is already in distress with regard to other types of loans outstanding with the same lender.

The presumption is based on concerns that, in these narrowly-defined circumstances, the prior loan may have triggered the need for the new loan because it exceeded the consumer's ability to repay, and that, absent an increase in residual income or a substantial decrease in the size of the payments on the loan, the new loan will also be unaffordable for the consumer. As with covered short-term loans, the Bureau is concerned that payments on a covered longer-term loan that exceed a consumer's ability to repay will cause the consumer to experience harms associated with defaulting on the loan or satisfying the loan payment but being unable to then meet other financial obligations and basic living expenses.

The presumption can be overcome, however, in circumstances that suggest that there is sufficient reason to believe that the consumer would, in fact, be able to afford the new loan even though he or she is seeking to reborrow during the term of or shortly after a prior loan. The Bureau recognizes, for example, that there may be situations in which the prior loan would have been affordable but for some unforeseen disruption in income or unforeseen increase in major financial obligations that occurred during the prior expense cycle and is not reasonably expected to recur during the underwriting period under § 1041.9 for the new loan. The Bureau also recognizes that there may be circumstances, albeit less common, in which even though the prior loan proved to be unaffordable, a new loan would be affordable because of a reasonably projected increase in net income or decrease in major financial obligations—for example, if the consumer has obtained a second, steady job that will increase the consumer's residual income going forward or the consumer has moved in the prior 30 days and will have lower housing expenses going forward.

Proposed § 1041.10(b) and (c) would define a set of circumstances in which the Bureau believes that consumer's recent borrowing history makes it unlikely that the consumer can afford a new covered longer-term loan on terms similar to a prior or existing loan.[693] In such circumstances, a consumer would be presumed to not have the ability to repay a covered longer-term loan under proposed § 1041.9. Proposed § 1041.10(d) would define the additional determinations that a lender would be required to make in cases where the presumption applies in order for the lender's determination under proposed § 1041.9 that the consumer will have the ability to repay a new covered longer-term loan to be reasonable despite the unaffordability of the prior loan. In addition, for the convenience of lenders and so that all restrictions relating to covered longer-term loans made under proposed § 1041.9 are found in one section of the proposed rule, proposed § 1041.10(e) contains a prohibition relating to effectuation of the provisions for making covered short-term loans under proposed § 1041.7.

The Bureau notes that this overall proposed approach is fairly similar to the framework included in the Small Business Review Panel Outline. There, the Bureau included a presumption of inability to repay for a covered longer-term loan if there are circumstances indicating distress and the new loan is made during the term of a prior loan, whether covered or not, from the same lender or its affiliates, or is made during the term of a prior covered loan from any lender. The Bureau considered a "changed circumstances" standard for overcoming the presumption that would have required lenders to obtain and verify evidence of a change in consumer circumstances indicating that the consumer had the ability to repay the new loan according to its terms. The Bureau also, as noted above, included a 60-day reborrowing period in the Small Business Review Panel Outline.

SERs and other stakeholders that offered feedback on the Outline urged the Bureau to provide greater flexibility with regard to using a presumptions framework to address concerns about repeated borrowing despite the contemplated requirement to determine ability to repay. The SERs and other stakeholders also urged the Bureau to provide greater clarity and flexibility in defining the circumstances that would permit a lender to overcome the presumption of unaffordability.

The Small Business Review Panel Report recommended that the Bureau request comment on whether a loan sequence could be defined with reference to a period shorter than the 60 days under consideration during the SBREFA process. The Small Business Review Panel Report further recommended that the Bureau consider additional approaches to regulation, including whether existing State laws and regulations could provide a model for elements of the Bureau's proposed interventions. In this regard, the Bureau notes that some States have cooling-off periods of one to seven days, as well as longer periods that apply after a longer sequence of loans. The Bureau's prior research has examined the effectiveness of these cooling-off periods[694] and, in the CFPB Report on Supplemental Findings, the Bureau is publishing research showing how different definitions of loan sequence affect the number of loan sequences and the number of loans deemed to be part of a sequence.[695] In the CFPB Report on Supplemental Findings, the Bureau is publishing additional analysis on the impacts of State cooling-off periods.[696] The latter analysis is also discussed in Market Concerns—Short-Term Loans.

The Bureau has made a number of adjustments to the presumptions framework in response to this feedback. For instance, the Bureau is proposing a 30-day reborrowing period rather than a 60-day reborrowing period. The Bureau has also provided greater specificity and flexibility about when a presumption of unaffordability would apply, for example, by proposing certain exceptions to the presumptions of unaffordability. The proposal also would provide somewhat more flexibility about when a presumption of unaffordability could be overcome by permitting lenders to determine that there would be sufficient improvement in financial capacity for the new loan because of a one-time drop in income since obtaining the prior loan (or during the prior 30 days, as applicable). The Bureau has also continued to assess potential alternative approaches to the presumptions framework, discussed below.

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[693] The Bureau notes that the proposed ability-to-repay requirements do not prohibit a consumer from taking out a covered longer-term loan when the consumer has one or more covered loans outstanding, but instead account for the presence of concurrent loans in two ways: (1) A lender would be required to obtain verification evidence about required payments on debt obligations, which are defined under proposed § 1041.9(a)(2) to include outstanding covered loans, and (2) any concurrent loans would be counted for purposes of applying the presumptions and prohibition under proposed § 1041.10. See the section-by-section analysis of proposed §§ 1041.6 and 1041.7(c)(1) for further discussion of how the proposed rule treats concurrent loans.

[694] *See* CFPB Data Point: Payday Lending, at 8.

[695] Report on Supplemental Findings, Chapter 5.

[696] Report on Supplemental Findings, Chapter 4.

The Bureau solicits comment on all aspects of the proposed presumptions of unaffordability, and other aspects of proposed § 1041.10, including the circumstances in which the presumptions apply (*e.g.,* the appropriate length of the reborrowing period and the appropriateness of other circumstances giving rise to the presumptions) and the requirements for overcoming a presumption of unaffordability. In addition, and consistent with the recommendations of the Small Business Review Panel Report, the Bureau solicits comment on whether the 30-day reborrowing period is appropriate for the presumptions and prohibitions, or whether a longer or shorter period would better address the Bureau's concerns about repeat borrowing.

Alternatives Considered

As with the additional limitations on making a covered short-term loan under § 1041.5 contained in proposed § 1041.6, the Bureau considered a number of alternative approaches to address reborrowing in circumstances indicating that the consumer was unable to afford the prior loan.

The Bureau considered an alternative approach under which, instead of defining the circumstances in which a formal presumption of unaffordability applies and the determinations that a lender must make when such a presumption applies to a transaction, the Bureau would identify circumstances indicative of a consumer's inability to repay that would be relevant to whether a lender's determination under proposed § 1041.9 is reasonable. This approach would likely involve a number of examples of indicia requiring greater caution in underwriting and examples of countervailing factors that might support the reasonableness of a lender's determination that the consumer could repay a subsequent loan despite the presence of such indicia. This alternative approach would be less prescriptive and thus leave more discretion to lenders to make such a determination. However, it would also provide less certainty as to when a lender's particular ability-to-repay determination is reasonable.

In addition, the Bureau has considered whether there is a way to account for unusual expenses within the presumptions framework without creating an exception that would swallow the rule. In particular, the Bureau considered permitting lenders to overcome the presumptions of unaffordability in the event that the consumer provided evidence that the reason the consumer was struggling to repay the outstanding loan or was seeking to reborrow was due to a recent unusual and non-recurring expense. For example, under such an approach, a lender could overcome the presumption of unaffordability by finding that the reason the consumer was seeking a new covered longer-term loan was as a result of a recent emergency car repair, furnace replacement or an unusual medical expense, so long as the expense is not reasonably likely to recur during the period of the new loan. The Bureau considered including such circumstances as an additional example of a situation in which the consumer's financial capacity going forward could be considered to be significantly better than it was during the prior 30 days (or since obtaining the prior loan) as described with regard to proposed § 1041.10(d) below.

While such an addition could provide more flexibility to lenders and to consumers to overcome the presumptions of unaffordability, an unusual and non-recurring expense test would also present several challenges. To effectuate this test, the Bureau would need to define, in ways that lenders could implement, what would be a qualifying "unusual and non-recurring expense," a means of assessing whether a new loan was attributable to such an expense rather than to the unaffordability of the prior loan, and standards for how such an unusual and non-recurring expense could be documented (*e.g.,* through transaction records). Such a test would have substantial implications for the way in which the ability-to-repay requirements in § 1041.9 address the standards for basic living expenses and accounting for potential volatility over the term of a loan. Most significantly, the Bureau is concerned that if a lender is permitted to overcome the presumption of unaffordability by finding that the consumer faced an unusual and non-recurring expense during repayment of the prior or outstanding loan, this justification would be invoked in cases in which the earlier loan had, in fact, been unaffordable. As discussed above, the fact that a consumer may cite a particular expense shock when seeking to reborrow does not necessarily mean that a recent prior loan was affordable; if a consumer, in fact, lacked the ability to repay the prior loan, it would be a substantial factor in why the consumer could not absorb the expense. Accordingly, the Bureau believes that it may be difficult to parse out causation and to differentiate between types of expense shocks and the reasonableness of lenders' ability-to-repay determinations where such shocks are asserted to have occurred.

In light of these competing considerations, the Bureau has chosen to propose the approach of supplementing the proposed § 1041.9 determination with formal presumptions. The Bureau is, however, broadly seeking comment on alternative approaches to addressing the issue of repeat borrowing in a more flexible manner, including the alternatives described above and on any other framework for assessing consumers' borrowing history as part of an overall determination of ability to repay. Specifically, the Bureau also solicits comment on the alternative of defining indicia of unaffordability, as described above. In addition, the Bureau specifically seeks comment on whether to permit lenders to overcome a presumption of unaffordability by finding that the consumer had experienced an unusual and non-recurring expense and, if so, on measures to address the challenges described above.

Legal Authority

As discussed in the section-by-section analysis of proposed § 1041.8 above, the Bureau believes that it may be an unfair and abusive practice to make a covered longer-term loan without determining that the consumer will have the ability to repay the loan. Accordingly, in order to prevent that unfair and abusive practice, proposed § 1041.9 would require lenders prior to making a covered longer-term loan—other than a loan made under a conditional exemption to the ability-to-repay requirements in § 1041.11 or § 1041.12—to make a reasonable determination that the consumer will have sufficient income, after meeting major financial obligations, to make payments under a prospective covered longer-term loan and to continue meeting basic living expenses. Proposed § 1041.10 would augment the basic ability-to-repay determination required by proposed § 1041.9 in circumstances in which the consumer's recent borrowing history or current difficulty repaying an outstanding loan provides important evidence with respect to the consumer's financial capacity to afford a new covered longer-term loan. The Bureau is proposing § 1041.10 based on the same source of authority that serves as the basis for proposed § 1041.9: the Bureau's authority under section 1031(b) of the Dodd-Frank Act, which provides that the Bureau's rules may include requirements for the purposes of preventing unfair, deceptive, or abusive acts or practices.[697]

As with proposed § 1041.9, the Bureau proposes the requirements in § 1041.10 to prevent the unfair and abusive practice identified in proposed § 1041.8, and the consumer injury that results from it. The Bureau believes that the additional requirements of proposed § 1041.10 may be needed in circumstances in which proposed § 1041.9 alone may not be sufficient to prevent a lender from making a covered longer-term loan that the consumer might not have the ability to repay. Accordingly, the Bureau believes that the requirements set forth in proposed § 1041.10 bear a reasonable relation to preventing the unfair and abusive practice identified in proposed § 1041.8. In addition, as further discussed in the section-by-section analysis of proposed § 1041.10(e), the Bureau proposes that provision pursuant to the Bureau's authority under section 1022(b)(3)(A) of the Dodd-Frank Act to conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from the requirements of a rule under Title X of the Dodd-Frank Act if the Bureau determines that doing so is "necessary or appropriate to carry out the purposes and objectives" of Title X of the Act.[698] Further, as further discussed in the section-by-section analysis of proposed § 1041.10(f), the Bureau proposes that provision pursuant to both the Bureau's authority under section 1031(b) of the Dodd-Frank Act and the Bureau's authority under section 1022(b)(1) of the Dodd-Frank Act to prevent evasions of the purposes and objectives of Federal consumer financial laws, including Bureau rules issued pursuant to rulemaking authority provided by Title X of the Dodd-Frank Act.[699]

10(a) Additional Limitations on Making a Covered Longer-Term Loan Under § 1041.9

Proposed § 1041.10(a) would set forth the general additional limitations on making a covered longer-term loan under proposed § 1041.9. Proposed § 1041.10(a) would provide that when a consumer is presumed not to have the ability to repay a covered longer-term loan, a lender's determination that the consumer will have the ability to repay the loan is not reasonable, unless the lender can overcome the presumption of unaffordability. Proposed § 1041.10(a) would further provide that a lender is prohibited from making a covered longer-term loan to a consumer during the period specified in proposed § 1041.10(e). In order to determine whether the presumptions and prohibition in proposed § 1041.10 apply to a particular transaction, proposed § 1041.10(a)(2) would require a lender to obtain and review information about the consumer's borrowing history from its own records, the records of its affiliates, and a consumer report from an information system currently registered under proposed § 1041.17(c)(2) or (d)(2), if one is available.

The Bureau notes that, as drafted, the proposed presumptions and prohibition in § 1041.10 would apply only to making specific additional covered longer-term loans. The Bureau solicits comment on whether a presumption of unaffordability or other additional limitations on lending also would be appropriate for transactions involving an increase in the credit available under an existing covered loan, making an advance on a line of credit under a covered longer-term loan, or other circumstances that may evidence repeated borrowing. If such limitations would be appropriate, the Bureau requests comment on how they should be tailored in light of relevant considerations.

In this regard, the Bureau further notes that the presumptions of unaffordability depend on the definition of outstanding loan in proposed § 1041.2(a)(15) and therefore would not cover circumstances in which the consumer is more than 180 days delinquent on the prior loan. The Bureau solicits comment on whether additional requirements should apply to the ability-to-repay determination for a covered longer-term loan in these circumstances; for instance, whether to generally prohibit lenders from making a new covered longer-term loan to a consumer for the purposes of satisfying a delinquent obligation on an existing loan with the same lender or its affiliate. In addition, the Bureau solicits comment on whether additional requirements should apply to covered longer-term loans that are lines of credit; for instance, whether a presumption of unaffordability should apply at the time of the ability-to-repay determination required under § 1041.9(b)(1)(ii) for a consumer to obtain an advance under a line of credit more than 180 days after the date of a prior ability-to-repay determination.

The Bureau also solicits comment on the proposed standard in § 1041.10(a) and on any alternative approaches to the relationship between proposed § 1041.9 and proposed § 1041.10 that would prevent consumer harm while reducing the burden on lenders. In particular, the Bureau solicits comment on whether the formal presumption and prohibition approach in § 1041.10 is an appropriate supplement to the § 1041.9 determination.

10(a)(1) General

Proposed § 1041.10(a)(1) would provide that if a presumption of unaffordability applies, a lender's determination that the consumer will have the ability to repay a covered longer-term loan is not reasonable unless the lender makes the additional determination set forth in proposed § 1041.10(d), and discussed in detail below, and the requirements set forth in proposed § 1041.9 are satisfied. Under proposed § 1041.10(d), a lender can make a covered longer-term loan notwithstanding the presumption of unaffordability if the lender reasonably determines, based on reliable evidence, that there will be sufficient improvement in the consumer's financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. Proposed § 1041.10(a)(1) would further provide that a lender must not make a covered longer-term loan under proposed § 1041.9 to a consumer during the period specified in proposed § 1041.10(e).

Proposed comment 10(a)(1)-1 clarifies that the presumptions and prohibition would apply to making a covered longer-term loan and, if applicable, are triggered at the time of consummation of the new covered longer-term loan. Proposed comment 10(a)(1)-2 clarifies that the presumptions and prohibitions would apply to rollovers of a covered short-term loan into a covered longer-term loan (or what is termed a "renewal" in some States), to the extent that such transactions are permitted under State law. Proposed comment 10(a)(1)-3 clarifies that a lender's determination that a consumer will have the ability to repay a covered long-term loan is not reasonable within the meaning of proposed § 1041.9 if under proposed § 1041.10 the consumer is presumed to not have the ability to repay the loan and that presumption of unaffordability has not been overcome in the manner set forth in proposed § 1041.10(d). Accordingly, if proposed § 1041.10 prohibits a lender from making a covered longer-term loan, then the lender must not make the loan, regardless of the lender's determination under proposed § 1041.9. Nothing in proposed § 1041.10 would displace the requirements of § 1041.9; on the contrary, the determination under proposed § 1041.10 would be, in effect, an additional component of the proposed § 1041.9 determination of ability to repay in situations in which the basic requirements of proposed § 1041.9 alone would be insufficient to prevent the unfair and abusive practice.

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[697] 12 U.S.C. 5531(b). As discussed below, the Bureau is proposing § 1041.10(e) to effectuate the conditions of proposed § 1041.7 and therefore is based on its authority under section 1022(b)(3)(A) of the Dodd-Frank Act.

[698] 12 U.S.C. 5512(b)(3).

[699] 12 U.S.C. 5512(b)(1).

10(a)(2) Borrowing History Review

Proposed § 1041.10(a)(2) would require a lender to obtain and review information about a consumer's borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, and to use this information to determine a potential loan's compliance with the requirements of proposed § 1041.10. Proposed comment 10(a)(2)-1 clarifies that a lender satisfies its obligation under § 1041.10(a)(2) to obtain a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.9(c)(3)(ii)(B) to obtain this same consumer report. Proposed comment 10(a)(2)-2 clarifies that if no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are currently available, the lender is nonetheless required to obtain information about a consumer's borrowing history from the records of the lender and its affiliates.

Based on outreach to lenders, including feedback from SERs, the Bureau believes that lenders already generally review their own records for information about a consumer's history with the lender prior to making a new loan to the consumer. The Bureau understands that some lenders in the market for covered longer-term loans also pull a consumer report from a specialty consumer reporting agency as part of standardized application screening, though practices in this regard vary widely across the market.

As detailed below in the section-by-section analysis of proposed §§ 1041.16 and 1041.17, the Bureau believes that information regarding the consumer's borrowing history is important to facilitate reliable ability-to-repay determinations. If the consumer already has a relationship with a lender or its affiliates, the lender can obtain some historical information regarding borrowing history from its own records. However, without obtaining a report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), the lender will not know if its existing customers or new customers have obtained a prior covered short-term loan or a prior covered longer-term balloon-payment loan from other lenders, as such information generally is not available in national consumer reports. Accordingly, the Bureau is proposing in § 1041.10(a)(2) to require lenders to obtain a report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if one is available.

The section-by-section analysis of proposed §§ 1041.16 and 1041.17, and part VI below explain the Bureau's attempts to minimize burden in connection with furnishing information to and obtaining a consumer report from an information system currently registered pursuant to proposed § 1041.17(c)(2) or (d)(2). Specifically, the Bureau estimates that each report would cost approximately $0.50. Consistent with the recommendations of the Small Business Review Panel Report, the Bureau requests comment on the cost to small entities of obtaining information about consumer borrowing history and on potential ways to further reduce the operational burden of obtaining this information.

10(b) Presumption of Unaffordability for Certain Covered Longer-Term Loans Following a Covered Short-Term Loan or Covered Longer-Term Balloon-Payment Loan

10(b)(1) Presumption

Proposed § 1041.10(b)(1) would provide that a consumer is presumed not to have the ability to repay a covered longer-term loan under proposed § 1041.9 during the time period in which the consumer has a covered short-term loan made under proposed § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter. As described further below, under an exception contained in proposed § 1041.10(b)(2), the presumption would not apply where the loan payments meet certain conditions.

Proposed comment 10(b)(1)-1 clarifies that a lender cannot make a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under proposed § 1041.9 outstanding and for 30 days thereafter unless either the exception to the presumption applies or the lender can overcome the presumption under proposed § 1041.10(d). The proposed comment also clarifies that the presumption would not apply if the loan is subject to the prohibition in proposed § 1041.10(c).

Where the presumption in proposed § 1041.10(b)(1) applies, it would not be reasonable for a lender to determine that the consumer will have the ability to repay the new covered longer-term loan without determining under proposed § 1041.10(d) that the presumption of unaffordability had been overcome. Such a determination under proposed § 1041.10(d) would require the lender to determine, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

The presumption in proposed § 1041.10(b) uses the same 30-day period used in proposed § 1041.6 to define when there is sufficient risk that the need for the new loan was triggered by the unaffordability of the prior loan. As discussed in the section-by-section analysis of § 1041.6(b), the Bureau believes that when a consumer seeks to take out a new covered short-term loan during the term of or within 30 days of a prior covered short-term loan, there is substantial reason for concern that the need to reborrow is being triggered by the unaffordability of the prior loan. The same is true if the new loan the consumer seeks is a covered longer-term loan with a similarly-sized payment obligation. Accordingly, proposed § 1041.10(b) applies a similar presumption to a reborrowing involving a covered longer-term loan as applies under proposed § 1041.6(b) to a reborrowing involving a covered short-term loan.

Similarly, covered longer-term balloon-payment loans, by definition, require a large portion of the loan to be paid at one time. As discussed in Market Concerns—Longer-Term Loans, the Bureau's research suggests that the fact that a consumer seeks to take out another covered longer-term balloon-payment loan shortly after having a previous covered longer-term balloon-payment loan outstanding will frequently indicate that the consumer did not have the ability to repay the prior loan and meet the consumer's other major financial obligations and basic living expenses. The Bureau found that the approach of the balloon payment coming due is associated with significant reborrowing.[700] This also may provide strong evidence that the consumer will not be able to afford a new covered longer-term loan unless payments on that new loan would be substantially smaller than were payments on the prior loan. However, the need to reborrow caused by an unaffordable covered longer-term balloon-payment loan is not necessarily limited to taking out a new loan of this same type. If the borrower takes out a new covered longer-term loan other than a covered longer-term balloon-payment loan in such circumstances, it is also a reborrowing. Accordingly, unless every payment on the new covered longer-term loan would be substantially smaller than the largest payment on the prior loan, the Bureau believes that there is substantial reason for concern that the new loan also would be unaffordable.

Given these considerations, to prevent the unfair and abusive practice identified in proposed § 1041.8, proposed § 1041.10(b) would create a presumption of unaffordability for a covered longer-term loan during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter. As a result of this presumption, it would not be reasonable for a lender to determine that the consumer will have the ability to repay the new covered longer-term loan without taking into account the fact that the consumer did need to reborrow after obtaining a prior loan and making a reasonable determination that the consumer will be able to repay the new covered longer-term loan without reborrowing. Proposed § 1041.10(d), discussed below, defines the elements for such a determination.

The Bureau solicits comment on the appropriateness of the proposed presumption to prevent the unfair and abusive practice and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. In particular, the Bureau solicits comment on other methods of supplementing the basic ability-to-repay determination required for a covered longer-term loan shortly following a covered short-term loan or covered longer-term balloon-payment loan.

The Bureau also solicits comment on whether there are other circumstances of borrowing on covered longer-term loans in close proximity to covered short-term loans or covered longer-term balloon-payment loans that would also warrant a presumption of unaffordability. In this regard, the Bureau notes that it is not proposing a mandatory cooling-off period applicable to covered longer-term loans, as proposed for covered short-term loans in proposed § 1041.6(f). However, some consumer groups have advocated for applying a presumption of unaffordability based on the intensity of a consumer's use of covered loans during a defined period of time; the Bureau solicits comment on the appropriateness of such an approach.

10(b)(2) Exception

Proposed § 1041.10(b)(2) would provide an exception to the presumption in § 1041.10(b)(1) if every payment on the new covered longer-term loan would be substantially smaller than the largest required payment on the prior covered short-term loan or covered longer-term balloon-payment loan. Proposed comment 10(b)(2-1 clarifies which payment on the prior loan is the largest payment and clarifies that the specific timing of payments on the prior loan and the new covered longer-term loan would not affect whether the exception in § 1041.10(b)(2) applies. Proposed comment 10(b)(1)-2 provides illustrative examples.

The Bureau believes that if payment of the largest required payment on the prior loan proved unaffordable, this unaffordability provides a strong basis for a presumption of unaffordability for a new covered longer-term loan with payments of a similar size. However, if every payment on the new covered longer-term loan would be substantially smaller than that highest payment on the prior loan, then the Bureau believes that there is not an adequate basis for such a presumption of unaffordability. In these circumstances, the Bureau believes that the basic ability-to-repay determination required by § 1041.9 would be sufficient to prevent the unfair and abusive practice identified in proposed § 1041.8.

The Bureau solicits comment on the appropriateness of the proposed exception to the presumption of unaffordability and on any other circumstances that would also warrant an exception to the presumption. The Bureau further seeks comment on whether a general "substantially smaller" standard is appropriate to prevent the unfair and abusive practice; whether a specific percentage reduction would be more appropriate; and, if so, what specific threshold or methodology should be used and why that number or formula appropriately differentiates substantially smaller payments. The Bureau particularly seeks comment on what type of reduction in balloon payments would be sufficient to warrant excepting the new loan from the presumption of unaffordability, and whether carrying over the threshold for the exception in proposed § 1041.6(b)(2)(i) for covered short-term loans would be appropriate in this context. That exception would generally apply when the amount that the consumer would owe on a new covered short-term loan would not be more than 50 percent of the amount paid on the prior covered short-term loan (or, if the transaction is a rollover, would not be more than the amount that the consumer paid on the prior covered short-term loan being rolled over).

10(c) Presumption of Unaffordability for a Covered Longer-Term Loan During an Unaffordable Outstanding Loan

Proposed § 1041.10(c) would create a presumption of unaffordability applicable to new covered longer-term loans when the consumer has a loan outstanding that was made or is being serviced by that same lender or its affiliate, other than a covered short-term loan or covered longer-term balloon-payment loan that would trigger the presumption in proposed § 1041.10(b) or the prohibition in proposed § 1041.10(e), and there are indicia that the consumer cannot afford the outstanding loan. Proposed § 1041.10(c)(2) would provide an exception to the presumption when every payment on the new covered longer-term loan would be substantially smaller than every payment on the outstanding loan or the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan.

The ability-to-repay determination under proposed § 1041.9 would require that a lender appropriately account for information known by the lender that indicates that the consumer may not have the ability to repay a covered longer-term loan according to its terms. Proposed § 1041.10(c) would supplement and strengthen that requirement in specific circumstances indicating that the current outstanding loan may not be affordable for the consumer and that, therefore, the new covered longer-term loan may not be affordable to the consumer.

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[700] Report on Supplemental Findings, Chapter 1. The findings in the CFPB Report on Supplemental Findings refer to both "refinancing" and reborrowing." Consistent with the Bureau's approach to defining reborrowing for the purposes of this proposal, both refinancing and reborrowing, as reported in the CFPB Report on Supplemental Findings, are considered reborrowing.

The Bureau has found that, for the lenders whose data was available to the Bureau, there is a very high level of refinancing, that consumers generally are taking substantial cash out at the time of refinancing, and that repayment patterns of consumers who refinanced a longer-term installment loan are generally identical to repayment patterns of consumers who ultimately repaid their loans in full.[701] This seems to indicate that consumers in the Bureau's data use longer-term loans as a continuing source of liquidity to meet ongoing needs.

The Bureau believes that this evidence can be viewed in one of two ways. On the one hand, the fact that in most situations consumers who are refinancing these loans have been able to make the required payments when due could be understood to suggest that they are not refinancing a loan because of difficulty satisfying obligations on the existing loan. On the other hand, the fact that after making a certain number of such payments consumers need to borrow more money could be seen as evidence that these consumers cannot afford the cumulative effect of the repayments and that the repayments are causing the need to reborrow. Because the evidence is ambiguous, the Bureau is not proposing to impose a general presumption of unaffordability for covered longer-term loans taken out during the term of or within 30 days following a previous covered longer-term loan, except with regard to covered longer-term balloon-payment loans, as proposed in § 1041.10(b) and discussed above.

However, the Bureau remains concerned that in some circumstances a refinancing or taking out a new loan during the term of an outstanding loan does evidence or could mask a problem a consumer is experiencing in repaying a loan and that in these cases a new covered longer-term loan may pose heightened risk to consumers. In particular, the Bureau believes that it is appropriate to apply heightened review to a consumer's ability to repay a new loan where the circumstances suggest that the consumer is struggling to repay an outstanding loan. The Bureau believes that the analysis required by proposed § 1041.10(c) may provide greater protection to consumers and certainty to lenders than simply requiring that such transactions be analyzed under proposed § 1041.9 alone. Proposed § 1041.9 would require generally that the lender make a reasonable determination that the consumer will have the ability to repay the contemplated covered longer-term loan, taking into account existing major financial obligations that would include the outstanding loan from the same lender or its affiliate. However, the presumption in proposed § 1041.10(c) would provide a more detailed roadmap as to when a new covered longer-term loan would not meet the reasonable determination test.

The Bureau also has concerns about potential risks with regard to refinancing by consumers who appear to be using covered longer-term loans like a line of credit over time, but such concerns are not the focus of this rulemaking. Specifically, for consumers who appear to be refinancing in order to use a covered longer-term loan like a line of credit over time, the Bureau is worried that other harms could result if lenders use aggressive marketing tactics. The Bureau understands that some lenders use aggressive marketing tactics to encourage consumers to refinance their loans and structure their loans such that a refinancing generates additional revenue for the lender, beyond the incremental finance charges, as a result of, for example, prepayment penalties, new origination fees, or new fees to purchase ancillary products associated with the refinancing. The Bureau is concerned that some of these practices may be unfair, deceptive, or abusive. However, such practices fall outside of the scope of the current rulemaking. If, however, the Bureau finds evidence of unlawful acts or practices through its supervisory or enforcement work, the Bureau will not hesitate to take appropriate action. Also, the Accompanying RFI seeks further information from the public about these practices and the Bureau also will continue to consider whether there is a need for additional rulemaking in this area.

For the purposes of this proposal, the Bureau is focused on certain lender practices regarding refinancing where the circumstances suggest that the consumers are having difficulty repaying the outstanding loan. Such practices are at the core of the Bureau's concern about making a covered longer-term loan to a consumer without determining that the consumer will be able to repay the loan according to its terms. Accordingly, the Bureau proposes to supplement the basic ability-to-repay determination in certain circumstances where the conditions of a consumer's existing indebtedness with the same lender or its affiliate indicate that the consumer may lack the ability to repay a new covered longer-term loan.

10(c)(1) Presumption

Proposed § 1041.10(c)(1) would require a lender to presume that a consumer does not have the ability to repay a covered longer-term loan if, at the time of the lender's determination under § 1041.9, the consumer has a loan outstanding that was made or is being serviced by the same lender or its affiliate and the consumer indicates or the circumstances suggest that the consumer may be experiencing difficulty repaying the outstanding loan. The proposed presumption would apply regardless of whether the outstanding loan is a covered loan, other than when proposed § 1041.10(b), (c), or (e) apply, or a non-covered loan.

Proposed § 1041.10(c)(1) would apply both to circumstances in which the consumer applies for a new loan from the same lender that made the outstanding loan (or its affiliate) and in which the consumer applies for a new loan from the company that now services the outstanding loan (or its affiliate), even if that company is not the original lender. The Bureau believes that it is appropriate to apply the proposed provision in the servicing scenario because the servicer and its affiliates would be in a particularly good position to determine if any of the four triggering circumstances in proposed § 1041.10(c)(1)(i) through (iv) is present as a result of its current relationship with the consumer, even if that company did not originate the outstanding loan.

Proposed comment 10(c)(1)-1 clarifies that if any of the circumstances in § 1041.10(c)(1) are present such that the consumer would be presumed to not have the ability to repay a contemplated covered longer-term loan under § 1041.9, then the lender cannot make that loan unless one of the exceptions to the presumption applies or the lender can overcome the presumption in the manner set forth in proposed § 1041.10(d). Proposed comment 10(c)(1)-2 clarifies that the presumption would not apply if the consumer's only outstanding loans are with other, unaffiliated lenders. Proposed comment 10(c)(1)-2 further clarifies that if § 1041.10(b), (c), or (e) applies to the transaction, then § 1041.10(c) would not apply.

Proposed § 1041.10(c)(1) would mean that in circumstances where there is an indication that an outstanding covered loan or non-covered loan that was made or is being serviced by the same lender or its affiliate is unaffordable, and neither of the exceptions in

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[701] *See* Report on Supplemental Findings, Chapter 1.

§ 1041.10(c)(2) applies, a lender cannot make a covered longer-term loan under § 1041.9 unless the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms, notwithstanding the fact that the consumer was unable to repay the prior loan without needing to reborrow.

In the Small Business Review Panel Outline, the Bureau included a presumption of inability to repay for certain refinances of existing loans, whether covered or not covered, from the same lender or its affiliates into covered longer-term loans. The Bureau also considered applying the presumption to any transaction in which the new loan would be a covered longer-term loan and the debt being refinanced was a covered loan from any lender. The Bureau understands, though, that lenders may have difficulty obtaining information about whether a consumer has indicated or the circumstances suggest an inability to repay a covered loan made or being serviced by a different and unaffiliated lender, rendering such a presumption particularly burdensome in those circumstances. Accordingly, the Bureau is not proposing such a presumption.

The Bureau solicits comment on the appropriateness of the proposed presumption to prevent the unfair and abusive practice, on each of the particular circumstances indicating unaffordability, discussed below, and on any alternatives that would adequately prevent consumer harm while reducing the burden on lenders. The Bureau also solicits comment on whether the specified conditions sufficiently capture circumstances in which consumers manifest distress in repaying a loan and on whether there are additional circumstances in which it may be appropriate to trigger the presumption of unaffordability.

In particular, the Bureau solicits comment on whether a pattern of refinancing that significantly extends the initial term of the loan warrants application of a presumption of unaffordability and, if so, at what point that presumption would be warranted; whether refinancing early in the repayment schedule of the loan would evidence unaffordability of the outstanding loan and, if so, up until what point in the life of the loan; and whether other performance indicators should be included in the circumstances triggering application of a presumption of unaffordability. In this regard, the Bureau specifically notes that some consumer groups have encouraged the Bureau to impose a presumption of unaffordability when a lender refinances an outstanding loan on which the consumer has repaid less than 75 percent of the loan; the Bureau seeks comment on the advisability of such an approach. The Bureau also solicits comment on whether to include a specific presumption of unaffordability in the event that the lender or its affiliate has recently contacted the consumer for collections purposes, received a returned check or payment attempt, or has an indication that the consumer's account lacks funds prior to making an attempt to collect payment. The Bureau further solicits comment on whether there are circumstances in which a loan ceases to be an outstanding loan within the meaning of § 1041.2(a)(15) because the consumer is more than 180 days delinquent on the loan that would nonetheless warrant applying a presumption of unaffordability.

The Bureau further seeks comment on the timing elements of the proposed indications of unaffordability and on whether alternative timing conditions, such as considering whether the consumer has been delinquent on a payment or otherwise expressed an inability to make one or more payments within the prior 60 days, would better prevent consumer harm. In this regard, the Bureau also solicits comment on whether seven days is the appropriate amount of time for a buffer period before a delinquency would prompt a presumption of unaffordability for a new covered longer-term loan and whether a shorter or longer period of time would be appropriate.

10(c)(1)(i)

Proposed § 1041.10(c)(1)(i) would make the presumption in § 1041.10(c)(1) applicable if a consumer is or has been delinquent by more than seven days on a scheduled payment on an outstanding loan within the past 30 days. Proposed comment 10(c)(1)(i)-1 clarifies that older delinquencies that have been cured would not trigger the presumption.

Recent delinquency indicates that a consumer is having difficulty repaying an outstanding loan. Through analysis of confidential information gathered in the course of its statutory functions, the Bureau has observed that for covered longer-term loans that are ultimately repaid rather than ending in default, the vast majority do not fall more than seven days delinquent. Accordingly, the Bureau believes that a delinquency of more than seven days indicates unaffordability of the scheduled payment and that permitting a buffer of seven days after a payment due date would avoid triggering the presumption in situations where the consumer is late in making a payment for reasons unrelated to difficulty repaying the loan.

The Bureau proposes to impose the presumption of unaffordability in proposed § 1041.10(c)(1) only if the indication of unaffordability on the part of the consumer occurred within the 30 days prior to the lender's determination under proposed § 1041.9 for the new covered longer-term loan. The Bureau believes that recent indications of unaffordability are most relevant in assessing the consumer's ability to repay. As discussed in the section-by-section analysis of § 1041.9(c)(3) above, the Bureau believes that the monthly income and expense cycle is the appropriate measure for a determination of whether a consumer will have the ability to repay a covered longer-term loan. Similarly, the Bureau believes that consideration of the consumer's borrowing history on an outstanding loan with the same lender or an affiliate within the past 30 days would appropriately identify current unaffordability of an existing obligation.

The Bureau solicits comment on whether using a seven-day delinquency metric and a 30-day lookback period is sufficient to identify consumers experiencing distress in repaying a loan or whether some other shorter or longer metric or lookback period would be more appropriate.

10(c)(1)(ii)

Proposed § 1041.10(c)(1)(ii) would make the presumption in § 1041.10(c)(1) applicable if the consumer expressed within the past 30 days an inability to make one or more payments on the outstanding loan. Proposed comment 10(c)(1)(ii)-1 clarifies that older consumer expressions would not trigger the presumption and provides illustrative examples. The Bureau believes that if a consumer informs a lender or its representative that the consumer is having difficulty making a payment, such information must be considered by the lender in determining whether the consumer will have the ability to repay a new covered longer-term loan.

As with delinquencies, the Bureau proposes to impose this presumption of unaffordability only if the expression on the part of the consumer occurred within the 30 days prior to the lender's determination under proposed § 1041.9 for the new covered longer-term loan because, as described above, the Bureau believes that an older expression from a consumer does not necessarily indicate whether the consumer would currently lack the ability to repay a covered longer-term loan.

The Bureau solicits comment on whether 30 days is an appropriate period of time for triggering this presumption of unaffordability and, if not, what time period should be used.

10(c)(1)(iii)

Proposed § 1041.10(c)(1)(iii) would make the presumption in § 1041.10(c)(1) applicable if the new covered longer-term loan would have the effect of the consumer being able to skip a payment on the outstanding loan that would otherwise fall due. Proposed comment 10(c)(1)(iii)-1 provides an illustrative example. Generally, both consumers and lenders have an incentive to make and receive regularly scheduled payments on loans. A transaction that would have the effect of permitting a consumer to skip a payment—without another benefit to the consumer in the form of substantially smaller payments or a substantial reduction in the total cost of credit, as discussed in the section-by-section analysis of proposed § 1041.10(c)(2) below—and that would deprive the lender of the receipt of funds that would otherwise be due may indicate a distressed refinance of the outstanding loan. The Bureau believes that refinancing in this manner may indicate that a consumer does not have the ability to repay a new covered longer-term loan.

The Bureau solicits comment on whether the skipped payment metric is an appropriate condition for application of the presumption; if so, whether 30 days is an appropriate period of time for triggering this presumption of unaffordability and, if not, what time period should be used.

10(c)(1)(iv)

Proposed § 1041.10(c)(1)(iv) would make the presumption in § 1041.10(c)(1) applicable if the new covered longer-term loan would result in the consumer receiving no disbursement of loan proceeds or a disbursement of loan proceeds that is an amount not substantially more than the amount of payment or payments that would be due under the outstanding loan within 30 days of consummation of the new loan. Proposed comment 10(c)(1)(iv)-1 provides illustrative examples.

A transaction that would result in a consumer receiving only enough cash to satisfy the forthcoming payment or payments due to the lender or its affiliate within 30 days, the length of a typical income and expense cycle, may indicate that the consumer is having difficulty making payments on the outstanding loan and is seeking the new covered longer-term loan in order to obtain cash to make those payments. The Bureau's analysis of confidential data gathered in the course of its statutory functions indicates that the circumstance in proposed § 1041.10(c)(1)(iv) would likely occur rarely because most consumers in the loan sample analyzed by the Bureau took out substantial cash when refinancing a longer-term installment loan.

While the Bureau is concerned that this condition could prompt some lenders to encourage consumers to take out loans in amounts larger than the consumer may actually need, the Bureau believes the circumstance may indicate that the outstanding loan is unaffordable and so the harm of not imposing a presumption of unaffordability for a new covered longer-term loan in this circumstance would outweigh the potential harm of larger loans. Additionally, the Bureau notes that the lender would still need to satisfy the requirements of proposed § 1041.9 for the new covered longer-term loan and, therefore, any loan amount would be permissible only if the lender makes a reasonable determination that the consumer will have the ability to repay the new covered longer-term loan.

The Bureau solicits comment on whether a consumer who would receive a disbursement of loan proceeds to cover more than one month's worth of payments should also be presumed not to have the ability to repay the new loan and, if so, at what point to draw the line in determining the applicability of the presumption.

10(c)(2) Exception

Proposed § 1041.10(c)(2) would provide an exception to the presumption of unaffordability in § 1041.10(c)(1) in the event that the new covered longer-term loan would meet certain conditions. As described below, the Bureau believes that if the new covered longer-term loan would reduce the consumer's costs in certain ways, the rationale for the presumption does not apply.

The Bureau solicits comment on the appropriateness of the proposed exception and on any alternatives or additions that would adequately protect consumers while reducing burden on lenders.

10(c)(2)(i)

Proposed § 1041.10(c)(2)(i) would provide an exception from the proposed presumption of unaffordability if every payment on the new covered longer-term loan would be substantially smaller than every payment on the outstanding loan. Proposed comment 10(c)(2)(i)-1 provides illustrative examples.

The Bureau believes that if payments of a certain amount proved unaffordable for a given consumer, this unaffordability provides a strong basis for a presumption of unaffordability for a new covered longer-term loan with payments of a similar size. However, if every payment on the new covered longer-term loan would be substantially smaller than every payment on the outstanding loan, then the Bureau believes that there is not an adequate basis for such a presumption of unaffordability. In these circumstances, the Bureau believes that the basic ability-to-repay determination required by § 1041.9 would be sufficient to prevent the unfair and abusive practice identified in proposed § 1041.8.

While the Bureau is concerned that this exception could prompt some lenders to extend loans with substantially smaller payments but a substantially longer duration, which could impose higher costs on the consumer over repayment of the loan, the Bureau believes that the benefits of this exception outweigh this potential source of consumer harm. Additionally, the Bureau notes that the lender would still need to satisfy the requirements of proposed § 1041.9 for the new covered longer-term loan and, therefore, any loan amount would be permissible only if the lender makes a reasonable determination that the consumer will have the ability to repay the loan, including accounting for volatility in income over time.

The Bureau solicits comment on the appropriateness of providing an exception to the proposed presumption in this circumstance. The Bureau also solicits comment on the proposed standard for substantially smaller payments and on alternatives—such as a specific percentage decrease in the size of payments relative to payments on the outstanding loan—that would adequately protect consumers while reducing burden on lenders. In particular, the Bureau solicits comment on available sources of information that would provide the basis for such a standard. In addition, the Bureau particularly seeks comment on whether carrying over the threshold for the exception in proposed § 1041.6(b)(2)(i) for covered short-term loans would be appropriate in this context. That exception would generally apply when the amount that the consumer would owe on the new covered short-term loan would not be more than 50 percent of the amount paid on the prior covered short-term loan (or, if the transaction is a rollover, would not be more than the amount that the consumer paid on the prior covered short-term loan that is rolled over).

10(c)(2)(ii)

Proposed § 1041.10(c)(2)(ii) would create an exception from the proposed presumption of unaffordability if the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan. Proposed comment § 1041.10(c)(2)(ii)-1 clarifies that the relative total costs of credit reflects the definition contained in proposed § 1041.2(a)(18) and provides illustrative examples.

The Bureau believes that providing an exception from the presumption of unaffordability for loans that would yield a substantial reduction in the total cost of credit may be appropriate to enable lenders to refinance consumers into relatively lower-cost loans. The effect of the proposed exception would be only to relieve the burden of the presumption of unaffordability when the refinance would result in a benefit to the consumer in the form of a substantially lower total cost of credit: The new covered longer-term loan would still need to satisfy the basic ability-to-repay requirements of proposed § 1041.9.

The Bureau solicits comment on the appropriateness of providing an exception to the proposed presumption in this circumstance. The Bureau also solicits comment on the proposed standard for substantial reduction in the total cost of credit and on alternatives—such as a specific percentage decrease in the total cost of credit relative to the cost of the outstanding loan—that would adequately protect consumers while reducing burden on lenders.

10(d) Overcoming the Presumption of Unaffordability

Proposed § 1041.10(d) would set forth the elements required for a lender to overcome the presumptions of unaffordability in proposed § 1041.10(b) and (c). Proposed § 1041.10(d) would provide that a lender can overcome the presumption of unaffordability only if the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. Proposed § 1041.10(d) would require lenders to measure sufficient improvement in financial capacity by comparing the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.9(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

The Bureau proposes several comments to clarify the requirements for a lender to overcome a presumption of unaffordability. Proposed comment 10(d)-1 clarifies that proposed § 1041.10(d) would permit the lender to overcome the presumption in limited circumstances evidencing an improvement in the consumer's financial capacity for the new loan relative to the consumer's financial capacity since obtaining the prior loan or, in some circumstances, during the prior 30 days. Proposed comments 10(d)-2 and comment 10(d)-3 provide illustrative examples of these circumstances. Proposed comment 10(d)-2 clarifies that a lender may overcome a presumption of unaffordability where there is reliable evidence that the need to reborrow is prompted by a decline in income during the prior 30 days that is not reasonably expected to recur for the period during which the lender is making an ability-to-repay determination for the new covered longer-term loan. Proposed comment 10(d)-3 clarifies that a lender may overcome a presumption of unaffordability where there is reliable evidence that the consumer's financial capacity will be sufficiently improved relative to the prior 30 days because of a projected increase in net income or a decrease in major financial obligations for the period during which the lender is making an ability-to-repay determination for the new covered longer-term loan. Proposed comment 10(d)-4 clarifies that reliable evidence consists of verification evidence regarding the consumer's net income and major financial obligations sufficient to make the comparison required under § 1041.10(d). Proposed comment 10(d)-4 further clarifies that a self-certification by the consumer does not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

With respect to proposed comment 10(d)-2, the Bureau believes that if the reborrowing is prompted by a decline in income since obtaining the prior loan (or during the prior 30 days, as applicable) that is not reasonably expected to recur during the period for which the lender is underwriting the new covered longer-term, the unaffordability of the prior loan, including difficulty repaying an outstanding loan, may not be probative as to the consumer's ability to repay a new covered short-term loan. Similarly, with respect to proposed comment 10(d)-3, the Bureau believes that permitting a lender to overcome the presumption of unaffordability in these circumstances would be appropriate because an increase in the consumer's expected income or decrease in the consumer's expected payments on major financial obligations relative to the prior 30 days may materially impact the consumer's financial capacity such that a prior unaffordable loan, including difficulty repaying an outstanding loan, may not be probative as to the consumer's ability to repay a new covered longer-term loan. Similarly, the Bureau believes that if the reborrowing is prompted by a decline in income during the prior 30 days that is not reasonably expected to recur during the period for which the lender is underwriting the new covered longer-term loan, the unaffordability of the prior loan, including difficulty repaying an outstanding loan, may not be probative as to the consumer's ability to repay a new covered longer-term loan.

As discussed above, the presumptions in proposed § 1041.10 supplement the basic ability-to-repay requirements in proposed § 1041.9 in certain circumstances where a consumer's recent borrowing indicates that a consumer would not have the ability to repay a new covered longer-term loan. Accordingly, the procedure in proposed § 1041.10(d) for overcoming the presumption of unaffordability would address only the presumption; lenders would still need to determine ability to repay in accordance with proposed § 1041.9 before making the new covered longer-term loan.

The Bureau's proposal would permit lenders to overcome the presumption of unaffordability for multiple successive refinancings. However, the Bureau notes that, as discussed with regard to proposed § 1041.6(e), certain patterns of reborrowing may indicate that the repeated determinations that the presumption of unaffordability was overcome were not consistent with proposed § 1041.10(d) and that the ability-to-repay determination for such loans were not reasonable under proposed § 1041.9.

The Bureau recognizes that the standard in proposed § 1041.10(d) would permit a lender to overcome a presumption of unaffordability only in a narrow set of circumstances that are reflected in certain aspects of a consumer's financial capacity and can be verified through reliable evidence. As discussed above with regard to alternatives considered for § 1041.10, the Bureau considered including an additional set of circumstances permitting lenders to overcome the presumptions of unaffordability in the event that the lender determined that the need to reborrow was prompted by an unusual and non-recurring expense rather than by the unaffordability of the prior loan. In light of the challenges with such an approach, described above, the Bureau elected instead to propose § 1041.10(d) without permitting an unusual and non-recurring expense to satisfy the conditions of the test. However, the Bureau solicits comment on including an unusual and non-recurring expense as a third circumstance in which lenders could overcome the presumptions of unaffordability.

The Bureau solicits comment on all aspects of the proposed standard for overcoming the presumptions of unaffordability. In particular, the Bureau solicits comment on the circumstances that would permit a lender to overcome a presumption of unaffordability; on whether other or additional circumstances should be included in the standard and, if so, how to define such circumstances. In addition, the Bureau solicits comment on the appropriate time period for comparison of the consumer's financial capacity between the prior and prospective loans, and, in particular, the different requirements for prior loans of different types. The Bureau solicits comment on the types of information that lenders would be permitted to use as reliable evidence to make the determination in proposed § 1041.10(d).

The Bureau also solicits comment on any alternatives that would adequately prevent consumer injury while reducing the burden on lenders, including any additional circumstances that should be deemed sufficient to overcome a presumption of unaffordability. The Bureau also solicits comment on how to address unexpected and non-recurring increases in expenses, such as major vehicle repairs or emergency appliance replacements, including on the alternative discussed above with regard to alternatives considered for proposed § 1041.10.

10(e) Prohibition on Making a Covered Longer-Term Loan Under § 1041.9 Following a Covered Short-Term Loan Made Under § 1041.7

Proposed § 1041.10(e) would prohibit a lender or its affiliate from making a covered longer-term loan under proposed § 1041.9 to a consumer during the time period in which a loan made by the lender or its affiliate under § 1041.7 is outstanding and for 30 days thereafter.[702] Proposed comment 10(e)-1 clarifies that lenders are permitted to make a covered longer-term loan under § 1041.11 or § 1041.12 during this period. While the purpose of the restriction in proposed § 1041.10(e) is to safeguard an important component of the proposed conditional exemption in § 1041.7, the Bureau is including this provision in proposed § 1041.10 for ease of reference for lenders so that they can look to a single provision of the rule for a list of prohibitions and presumptions that affect the making of covered longer-term loans under proposed § 1041.9.

For purposes of proposed § 1041.10(e) and its accompanying commentary, the Bureau is relying on authority under section 1022(b)(3)(A) of the Dodd-Frank Act to grant conditional exemptions in certain circumstances from rules issued by the Bureau under the Bureau's Dodd-Frank Act legal authorities. As discussed at part IV, Dodd-Frank Act section 1022(b)(3)(A) authorizes the Bureau to, by rule, "conditionally or unconditionally exempt any class of . . . consumer financial products or services" from any provision of Title X of the Dodd-Frank Act or from any rule issued under Title X as the Bureau determines "necessary or appropriate to carry out the purposes and objectives" of Title X. As discussed in the section-by-section analysis of proposed § 1041.7, the Bureau believes that the proposed conditional exemption for covered short-term loans is appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank.

To effectuate the important conditions of the exemption in proposed § 1041.7, the Bureau is proposing the prohibition contained in § 1041.10(e). A covered short-term loan made under proposed § 1041.7 is not subject to the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6. As a result, for some consumers, a covered short-term loan made under proposed § 1041.7 would be unaffordable and leave them in a vulnerable financial position. Under these circumstances, the principal reduction requirements under proposed § 1041.7(b)(1) and the three loan limit on a sequence of loans made under § 1041.7 would allow consumers to repay the principal gradually over a three-loan sequence. This proposed protection could be circumvented if, in lieu of making a loan subject to such principal reduction, a lender were free to make a high-cost covered longer-term loan under proposed § 1041.9 during the 30 days following repayment of the first loan—or second loan—in a sequence of covered short-term loans made under § 1041.7 or while such first or second loan in the sequence was outstanding.

Furthermore, the Bureau believes that the prohibition in proposed § 1041.10(e) would prevent lenders from using a covered short-term loan made under proposed § 1041.7 to induce consumers into taking a covered longer-term loan made under proposed § 1041.9. As noted above, many consumers would not be able to afford to repay the full amount of a covered short-term loan made under proposed § 1041.7 when the loan comes due. For that reason, proposed § 1041.7 would permit the lender to make two additional loans with a one-third principal reduction for each subsequent loan so that the consumer effectively can repay the initial loan amount in installments. In the absence of the proposed requirement, as a covered short-term loan made under proposed § 1041.7 comes due, the lender could leverage the consumer's financial vulnerability and need for funds to make a covered longer-term loan that the consumer otherwise would not have taken. For a lender, this business model would generate more revenue than a business model in which the lender adhered to the proposed path for a sequence of loans made under proposed § 1041.7 and would also reduce the upfront costs of customer acquisition on covered longer-term loans. Lenders who desire to make covered longer-term loans under proposed § 1041.9 ordinarily would have to take steps to acquire customers willing to take those loans and to disclose the terms of those loans upfront. For the consumer, what is ostensibly a short-term loan may, contrary to the consumer's original expectations, result in long-term debt.

The Bureau recognizes that proposed § 1041.10(e) would prohibit a lender or its affiliate from making a covered longer-term loan that otherwise could be made assuming that the applicable requirements of proposed §§ 1041.9 and 1041.10 were satisfied. The Bureau views this proposed requirement as a reasonable restriction to prevent lenders from using the framework provided in proposed § 1041.7 to induce consumers to borrow covered longer-term loans under proposed § 1041.9.

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[702] Proposed § 1041.10(e) provides that it applies notwithstanding the presumption of unaffordability under proposed § 1041.10(b). If the covered longer-term loan would be made during the time period in which the consumer has a covered short-term loan made by the lender or its affiliate under proposed § 1041.7 outstanding and for 30 days thereafter, then the prohibition in proposed § 1041.10(e) would apply, rather than the presumption under proposed § 1041.10(b).

The Bureau notes that, unlike the prohibition in proposed § 1041.6(g) applicable to covered short-term loans, the prohibition in proposed § 1041.10(e) would apply only to loans made by the same lender or its affiliate, not to loans made by unaffiliated lenders. A consumer who chooses to transition from a covered short-term loan made under proposed § 1041.7 to a covered longer-term loan made under proposed § 1041.9 could do so by seeking out this type of loan from a different (unaffiliated) lender, or by waiting 30 days after repayment of the prior covered short-term loan made under § 1041.7.

In addition, the lending restrictions under proposed § 1041.10(e) would not encompass covered longer-term loans made under proposed §§ 1041.11 and 1041.12. With respect to the types of loans subject to the requirements under proposed § 1041.10(e), the Bureau is drawing a distinction between covered longer-term loans made under proposed §§ 1041.11 and 1041.12 and covered longer-term loans made under proposed § 1041.9 for two principal reasons. First, the Bureau does not believe that the same incentives would be present for lenders to use covered short-term loans made under proposed § 1041.7 to induce consumers to take out covered longer-term loans under proposed §§ 1041.11 and 1041.12. Covered longer-term loans under proposed §§ 1041.11 and 1041.12 would be subject to various requirements related to duration, cost, and other loan terms, as well as important backend protections. The Bureau believes these requirements in proposed §§ 1041.11 and 1041.12 would make offering a covered short-term loan under proposed § 1041.7 to induce consumers to take out a covered longer-term loan under proposed §§ 1041.11 and 1041.12 an unattractive business model for lenders. Second, even if the Bureau were concerned that such incentives exist, the Bureau believes that it is unlikely that many lenders would offer both covered short-term loans under proposed § 1041.7 and covered longer-term loans under proposed §§ 1041.11 and 1041.12.

The Bureau notes that this proposed prohibition was not included in the Small Business Review Panel Outline. The Bureau seeks comment on whether this proposed prohibition is appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act. In this regard, the Bureau solicits comment on whether it is likely that covered short-term loans made under proposed § 1041.7 could be used to induce consumers to take covered longer-term loans under proposed § 1041.9. The Bureau seeks comment on whether lenders would anticipate making covered short-term loans under proposed § 1041.7 and covered longer-term loans under proposed § 1041.9 to consumers close in time to one another, if permitted to do so under a final rule. The Bureau, further, seeks comment on whether imposing the prohibition for 30 days after the loan made under proposed § 1041.7 is repaid is the appropriate length of time or whether a shorter or longer period is appropriate. The Bureau seeks comment on the impact this proposed prohibition would have on small entities. Finally, the Bureau seeks comment on whether any alternative approaches exist that would address the Bureau's concerns related to effectuating the conditional exemption in proposed § 1041.7 while preserving the ability of lenders to make covered longer-term loans under proposed § 1041.9 close in time to covered short-term loans under proposed § 1041.7.

10(f) Determining Period Between Consecutive Covered Loans

Proposed § 1041.10(f) would define how a lender must determine the number of days between covered loans for the purposes of proposed § 1041.10(b) and (e). In particular, proposed § 1041.10(f) would specify that days on which a consumer had a non-covered bridge loan outstanding do not count toward the determination of time periods specified by proposed § 1041.10(b) and (e). Proposed comment 10(f)-1 clarifies that the proposed requirement reflects the requirement in proposed § 1041.6(h): Proposed § 1041.10(f) would apply if the lender or its affiliate makes a non-covered bridge loan to a consumer during the time period in which any covered short-term loan or covered longer-term balloon-payment loan made by the lender or its affiliate is outstanding and for 30 days thereafter.

As with proposed § 1041.6(h), the Bureau is concerned that there is some risk that lenders might seek to evade the proposed rule designed to prevent the unfair and abusive practice by making certain types of loans that fall outside the scope of the proposed rule during the 30-day period following repayment of a covered short-term loan or covered longer-term balloon-payment loan. Since the due date of such loans would be beyond that 30-day period, the lender would be free to make a covered longer-term loan without having to comply with proposed § 1041.10(b) or proposed § 1041.10(e). Proposed § 1041.2(a)(13) would define non-covered bridge loan as a non-recourse pawn loan made within 30 days of an outstanding covered short-term loan and that the consumer is required to repay within 90 days of its consummation. The Bureau is seeking comment under that provision as to whether additional non-covered loans should be added to the definition.

As with other provisions of proposed § 1041.10, in proposing § 1041.10(f) and its accompanying commentary, the Bureau is relying on the Bureau's authority to prevent unfair, deceptive, and abusive acts and practices under the Dodd-Frank Act.[703] For purposes of proposed § 1041.10(f) in particular, the Bureau is also relying on the Bureau's anti-evasion authority under section 1022(b)(1) of the Dodd-Frank Act. As discussed at part IV, Dodd-Frank Act section 1022(b)(1) provides that the Bureau's director may prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." The Bureau believes that the requirements of proposed § 1041.10(f) would prevent evasions of the reborrowing restrictions under proposed § 1041.10(b) by not counting the days on which a non-covered bridge loan is outstanding toward the determination of whether a subsequent covered longer-term loan made by the lender or an affiliate is made within 30 days of the prior covered short-term loan or covered longer-term balloon-payment loan outstanding, as applicable. This would prevent evasion insofar as, in the absence of this proposed restriction, a lender or its affiliate could make a non-covered bridge loan to keep a consumer in debt on a non-covered bridge loan during the reborrowing period and then wait to make a new covered longer-term loan with similar payments more than 30 calendar days after the prior loan, which would evade the presumption in proposed § 1041.10(b) and the prohibition in proposed § 1041.10(e). The Bureau is concerned that this type of circumvention of the reborrowing restrictions could lead to lenders making covered longer-term loans that consumers do not have the ability to repay.

Accordingly, the Bureau proposes to exclude from the period of time between affected loans those days on which a consumer has a non-covered bridge loan outstanding. The Bureau believes that defining the period of time between covered loans in this manner may be appropriate to prevent lenders from making covered longer-term loans for which the consumer does not have the ability to repay.

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[703] 12 U.S.C. 5531(b).

The Bureau solicits comment on the appropriateness of the standard in proposed § 1041.10(f) and on any alternatives that would adequately prevent consumer harm while reducing burden on lenders.

Section 1041.11 Conditional Exemption for Certain Covered Longer-Term Loans of up to 6 Months' Duration

Background

Proposed § 1041.11 would provide a conditional exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for certain covered longer-term loans that share certain features of the NCUA PAL program. Proposed § 1041.11 would allow a lender to make a covered longer-term loan without making the ability-to-repay determination that would be required by proposed §§ 1041.9 and 1041.10 and without complying with the payment notice requirement of § 1041.15(b), provided that certain conditions and requirements are satisfied. The conditions for making a loan under § 1041.11 largely track the conditions set forth by the NCUA at 12 CFR 701.21(c)(7)(iii) for a Payday Alternative Loan made by a Federal credit union; in addition, the Bureau is proposing certain additional requirements. The Bureau proposes this provision pursuant to its authority under section 1021(b)(3) of the Dodd-Frank Act[704] to create conditional exemptions from rules issued under Title X of the Dodd-Frank Act.

As discussed in part II.C above, the NCUA amended its regulations in 2010 to authorize credit unions within its jurisdiction to make what it denominated as "payday alternative loans."[705] These rules are intended to provide a "regulatory structure under which [credit unions] could offer a responsible payday loan alternative to members in a safe and sound manner."[706] In a subsequent advance notice of proposed rulemaking, NCUA explained that it was concerned that many credit union members who turned to typical payday loans "are often unable to break free of [an] unhealthy dependence" on such loans. The agency created the Payday Alternative Loan program to provide "a viable alternative" that could provide a lower cost in the short term and, in the long term, "offer borrowers a way to break the cycle of reliance on payday loans by building creditworthiness and transitioning to traditional, mainstream financial products."[707]

Over 700 Federal credit unions, nearly 20 percent of Federal credit unions nationally, made approximately $123.3 million in Payday Alternative Loans during 2015. In 2014, the average loan amount was $678. Three-quarters of the participating Federal credit unions reported consumer payment history to consumer reporting agencies. The annualized net charge-off rate, as a percent of average loan balances outstanding, in 2014 for these loans was 7.5 percent.

Proposed § 1041.11 reflects the Bureau's belief that it may be appropriate to incorporate certain aspects of the NCUA Payday Alternative Loan program into the Bureau's regulation in order to enable such lending to continue with minor modifications and, where applicable State law permits, to allow lenders that are not Federal credit unions to make such loans without undertaking the ability-to-repay determination that would be required by proposed §§ 1041.9 and 1041.10 and without complying with the payment notice requirement of proposed § 1041.15(b). The Bureau believes that proposed § 1041.11 would provide strong consumer protections to address consumer harms in this market by limiting the loan terms, including the permissible cost of credit and placing restrictions on reborrowing loans, while largely preserving an existing product that is already subject to Federal law designed to ensure that the loans are affordable and the risks to consumers are minimized. Further, as discussed in the section-by-section analysis of proposed § 1041.15(b)(2)(i), the Bureau is concerned that lenders may be unable to continue offering Payday Alternative Loans if the payment notice requirement of proposed § 1041.15(b) is applied to these loans.

The Bureau believes that proposed § 1041.11 would reduce the cost of compliance with the Bureau's proposal, if finalized, for lenders that would make covered longer-term loans meeting the proposed conditions by relieving lenders of the obligation to satisfy various requirements of proposed §§ 1041.9, 1041.10, and 1041.15(b). Further, the Bureau believes that the conditional exemption in proposed § 1041.11 is appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act, including ensuring that "all consumers have access to markets for consumer financial products and services" and that these markets "operate transparently and efficiently to facilitate access and innovation."[708] Specifically, the proposed conditional exemption is designed to facilitate access to credit by permitting lenders an alternative option for making covered longer-term loans, subject to important structural, cost, and borrowing history limitations.

During the SBREFA process, the Bureau received feedback from some of the SERs—including, in particular, comments from some of the SERs that are non-depository lenders—generally expressing skepticism that loans sharing the features of the NCUA Payday Alternative Loan would be viable products for their businesses. The Bureau also received similar feedback from other lenders in response to the Small Business Review Panel Outline. Responding to the proposals being considered by the Bureau as part of the SBREFA process, some of the SERs asserted that the loan principal amount was too small, the duration was too short, and the permissible cost of credit too low for such loans to be economically viable for their businesses. The Bureau also received feedback from lenders, including some credit unions and other depository institutions that otherwise expressed general willingness to make loans that were generally similar to loans under § 1041.11, but objected to the particular pricing structure permitted under the NCUA regulation.

Incorporating many of the conditions established by the NCUA for its Payday Alternative Loan program into a conditional exemption would create a narrow exemption to the general requirement of the Bureau's proposal to determine a consumer's ability to repay prior to making a covered longer-term loan. The Bureau recognizes that the conditional exemption would be more attractive to lenders if the conditions were more permissive. The Bureau believes, however, that such an expansion of the conditional exemption could undermine the core consumer protection purpose of the Bureau's proposal. To the extent that a lender finds the conditions in proposed § 1041.11 too limiting, they would be able to make larger, higher-cost, or longer-term loans to those consumers that the lender reasonably determines have the ability to repay such loans.

At the same time, the Bureau also observed from engagement with credit unions after releasing the Small Business Review Panel Outline that some Federal credit unions have found the requirements of the NCUA Payday

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[704] 12 U.S.C. 5512(b)(3).

[705] 75 FR 58285 (Sept. 24, 2010).

[706] 75 FR 58285 (Sept. 24, 2010).

[707] 77 FR 59347 (Sept. 27, 2012).

[708] 12 U.S.C. 5511(a), (b)(5).

Alternative Loan program to be feasible for certain consumers, even if generating limited revenue for these entities. The purpose of the conditional exemption in proposed § 1041.11 is to enable these lenders to continue making loans under the NCUA Payday Alternative Loan Program and to allow other lenders, including banks and non-depositories to make similar loans, as well. The Bureau received feedback indicating that layering of additional requirements on top of the NCUA regulations could cause lenders currently making or otherwise interested in making loans of this type to refrain from doing so. For instance, lenders that indicated that they would otherwise be inclined to make Payday Alternative Loan-like loans stated that one of their biggest concerns was that the Small Business Review Panel Outline indicated that the Bureau was considering requiring lenders to furnish to and obtain a consumer report from one or more specialty consumer reporting agencies, which the lenders believed would be costly and unwarranted given the limited revenues likely to be generated by these loans.

The Small Business Review Panel Report recommended that the Bureau solicit comment on additional options for alternative requirements for making covered longer-term loans without satisfying the proposed ability-to-repay requirements. Considering the feedback from SERs and the recommendation of the Small Business Review Panel, the Bureau evaluated each potential condition under § 1041.11 and has made some adjustments to the approach included in the Small Business Review Panel Outline, as discussed the section-by-section analysis of each proposed provision. The Bureau is also proposing an additional set of alternative requirements for making covered longer-term loans in proposed § 1041.12 in part to address concerns related to making loans under proposed § 1041.11 and, as discussed further below, is soliciting comment on whether additional alternatives would be appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act.

In proposing to permit all lenders to make covered longer-term loans under § 1041.11—rather than limiting the exemption to certain lenders, such as Federal credit unions—the Bureau endeavors to facilitate access to credit, regardless of the size or charter status of the entity with which a consumer conducts her other financial transactions, within the important limits imposed by more protective State, local, and tribal laws. Extending the conditional exemption to all financial institutions that choose to make loans of the type provided for in § 1041.11 furthers that purpose.

The Bureau seeks comment generally on whether to provide a conditional exemption from the proposed ability-to-repay and payment notice requirements for covered longer-term loans sharing certain requirements of the NCUA Payday Alternative Loan. In particular, the Bureau solicits comment on whether proposed § 1041.11 would appropriately balance the concerns for access to credit and consumer protection; on the costs and other burdens that proposed § 1041.11 would, if finalized, impose on lenders, including small entities; and on each of the specific conditions and requirements under proposed § 1041.11, discussed below.

The Bureau also solicits comment on whether to restrict the availability of the conditional exemption under proposed § 1041.11 to certain classes of lenders denominated by size or charter type, and, if so, what the justification for such a restriction would be. In addition, the Bureau seeks comment on whether a different set of conditions for covered longer-term loans exempt from the proposed ability-to-repay and payment notice requirements would be appropriate, and, if so, what, specifically, such an alternative set of conditions would be. For example, the Bureau seeks comment on whether the conditional exemption should be limited to loans made to consumers with whom the lender has a pre-existing relationship and, if so, what type and duration of relationship should be required. In addition, the Bureau solicits comment on the extent to which lenders interested in making a covered longer-term loan conditionally exempt from the proposed ability-to-repay and payment notice requirements anticipate making loans subject to the requirements of proposed § 1041.11, as compared to proposed § 1041.12.

Legal Authority

Proposed § 1041.11 would establish an alternative set of requirements for covered short-term loans that, if complied with by lenders, would conditionally exempt them from the unfair and abusive practice identified in proposed § 1041.8, the ability-to-repay requirements under proposed §§ 1041.9 and 1041.10, and the payment notice requirement of proposed § 1041.15(b). The Bureau is proposing the requirements of proposed § 1041.11 pursuant to the Bureau's authority under Dodd-Frank Act section 1022(b)(3)(A) to grant conditional exemptions in certain circumstances from rules issued by the Bureau under the Bureau's Dodd-Frank Act legal authorities.

Dodd-Frank Act section 1022(b)(3)(A) authorizes the Bureau to, by rule, "conditionally or unconditionally exempt any class of . . . consumer financial products or services" from any provision of Title X of the Dodd-Frank Act or from any rule issued under Title X as the Bureau determines "necessary or appropriate to carry out the purposes and objectives" of Title X. The purposes of Title X are set forth in Dodd-Frank Act section 1021(a),[709] which provides that the Bureau shall implement and, where applicable, enforce Federal consumer financial law consistently "for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that [such markets] are fair, transparent and competitive."

The objectives of Title X are set forth in Dodd-Frank Act section 1021(b).[710] Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services: (1) Consumers "are provided with timely and understandable information to make responsible decisions about financial transactions" (*see* Dodd-Frank Act section 1021(b)(1)); [711] (2) consumers "are protected from unfair, deceptive, or abusive acts and practices and from discrimination" (*see* Dodd-Frank Act section 1021(b)(2)); [712] (3) "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens" (*see* Dodd-Frank Act section 1021(b)(3)); [713] (4) "Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair completion" (*see* Dodd-Frank Act section 1021(b)(4)); [714] and "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation" (*see* Dodd-Frank Act section 1021(b)(5)). [715]

When issuing an exemption under Dodd-Frank Act section 1022(b)(3)(A), the Bureau is required under Dodd-Frank Act section 1022(b)(3)(B) to take into consideration, as appropriate, three factors. These enumerated factors are:

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[709] 12 U.S.C. 5511(a).

[710] 12 U.S.C. 5511(b).

[711] 12 U.S.C. 5511(b)(1).

[712] 12 U.S.C. 5511(b)(2).

[713] 12 U.S.C. 5511(b)(3).

[714] 12 U.S.C. 5511(b)(4).

[715] 12 U.S.C. 5511(b)(5).

(1) The total assets of the class of covered persons;[716] (2) the volume of transactions involving consumer financial products or services in which the class of covered persons engages;[717] and (3) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[718]

In connection with the statutory factor focusing on the extent to which existing applicable provisions of law provide consumers with adequate protections, the Bureau observes that the Federal Credit Union Act[719] and associated NCUA regulations[720] currently provide a suite of protections for certain small-dollar loans made by Federal credit unions that would be covered longer-term loans if the Bureau finalized the proposed rule. These protections include an express limitation on the permissible cost of credit, as well as a number of structural conditions for such loans, limitations related to the consumer's borrowing history, and requirements related to the Federal credit union's underwriting policies.[721]

As discussed above, the loans currently offered by Federal credit unions appear to be substantially safer with regard to risk of default, reborrowing, and collateral harms from unaffordable payments than many alternative products on the market today. While the Bureau believes that certain additional safeguards would be prudent, as discussed below, to adaption of the product by other types of lenders, the Bureau believes that the track record of Federal credit unions concerning the adequacy of the existing applicable provisions of law is a substantial factor supporting issuance of the proposed conditional exemption. Accordingly, the Bureau proposes to provide a conditional exemption from proposed §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for covered longer-term loans that share certain features of the NCUA Payday Alternative Loans. The proposed conditional exemption would be a partial exemption meaning that loans under § 1041.11 would still be subject to all other provisions of the Bureau's proposed rule; for example, lenders would still be required to comply with the limitation on payment transfer attempts in proposed § 1041.14, the consumer rights notice in proposed § 1041.15(d), and the compliance program and record retention requirements in proposed § 1041.18.

The Bureau believes that these loans are a lower-cost, safer alternative in the market for payday, vehicle title, and installment loans. In addition, the Bureau has not observed evidence that lenders making loans under the NCUA Payday Alternative Loan program participate in widespread questionable payment practices that warrant the proposed payment notice requirement in § 1041.15(b). The Bureau therefore believes that a conditional exemption for loans sharing certain features of the NCUA Payday Alternative Loan program is necessary or appropriate to carry out the purposes or objectives of Title X of the Dodd-Frank Act, including the objective of making credit available to consumers in a fair and transparent manner. Accordingly, the Bureau proposes to provide an exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for such covered longer-term loans.

The Bureau seeks comment on whether the Bureau should rely upon the Bureau's statutory exemption authority under Dodd-Frank Act section 1022(b)(3)(A) to exempt loans that satisfy the requirements of proposed § 1041.11 from the unfair and abusive practice identified in proposed § 1041.8, the ability-to-repay requirements proposed under §§ 1041.9 and 1041.10, and the payment notice requirement proposed under § 1041.15(b). Alternatively, the Bureau seeks comment on whether the requirements under proposed § 1041.11 should instead be based on the Bureau's authority under Dodd-Frank Act section 1031(b) to prescribe rules identifying as unlawful unfair, deceptive, or abusive practices and to include in such rules requirements for the purpose of preventing such acts or practices. In particular, the Bureau requests comment on whether loans made under proposed § 1041.11 should be expressly excluded from the identification of the unfair and abusive practice rather than exempted therefrom or whether the requirements for loans made under proposed § 1041.11 should be considered requirements for preventing unfair and abusive practices.

11(a) Conditional Exemption for Certain Covered Longer-Term Loans

Proposed § 1041.11(a) would provide a conditional exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for covered longer-term loans satisfying the conditions and requirements in § 1041.11(b) through (e). Proposed § 1041.11(a) would not provide an exemption from any other provision of law. For example, proposed § 1041.11(a) would not permit loans to servicemembers and their dependents that would violate the Military Lending Act and its implementing regulations.

Proposed comment 11(a)-1 clarifies that, subject to the requirements of other applicable laws, § 1041.11(a) would permit all lenders to make loans pursuant to § 1041.11. Proposed comment 11(a)-1 further clarifies that § 1041.11(a) applies only to covered longer-term loans and so loans under § 1041.11 would have a duration of more than 45 days.

While the NCUA requirements for Payday Alternative Loans permit Federal credit unions to make loans with a duration of one month, the Bureau is concerned that, given the financial circumstances of many borrowers, it may be difficult for many borrowers to repay a 30-day loan without the need to reborrow in short order. The Bureau is proposing a separate alternative path for covered short-term loans under proposed § 1041.7, which would permit borrowers to obtain up to three back-to-back covered short-term loans with gradual tapering of the loan principal. The Bureau believes that restricting the availability of the proposed exemption for the loans sharing certain features of NCUA's Payday Alternative Loan program to covered longer-term loans would permit lenders an alternative way to make relatively lower-cost loans without disrupting the core features of the Bureau's proposed framework for regulation in the affected markets.

The Bureau solicits comment on whether to extend the proposed conditional exemption to include covered short-term loans with a minimum duration of 30 days.

11(b) Loan Term Conditions

Proposed § 1041.11(b) would require loans under § 1041.11 to meet certain conditions as to the loan terms. In general, the requirements in proposed § 1041.11(b) parallel certain conditions already required for Federal credit unions making loans pursuant to the NCUA Payday Alternative Loan requirements.

Each proposed condition for a loan under § 1041.11 is described below. The

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[716] 12 U.S.C. 5512(b)(3)(B)(i).

[717] 12 U.S.C. 5512(b)(3)(B)(ii).

[718] 12 U.S.C. 5512(b)(3)(B)(iii).

[719] 12 U.S.C. 1751, *et seq.*

[720] 12 CFR 701.21(c)(7)(iii).

[721] The Bureau has taken the other two statutory factors listed in 12 U.S.C. 5512(b)(3)(B) into consideration and has concluded that it is not able, in this instance, to incorporate these two factors into its justification for the proposed conditional exemption. These factors are relevant to an exemption of a class of covered persons, whereas proposed § 1041.11 would exempt a class of transactions from certain requirements of the proposed rule, and the Bureau is proposing to make this conditional exemption available to lenders of any class that elect to make loans consistent with the terms of § 1041.11.

Bureau solicits comment on all aspects of the loan term conditions, including on the burden such conditions, if finalized, would impose on lenders, including small entities, making loans under § 1041.11. The Bureau also seeks comment on whether other or additional loan term conditions would be appropriate to carry out the objectives of Title X of the Dodd-Frank Act, including the consumer protection and access to credit objectives. In this regard, the Bureau notes that proposed § 1041.12 would also provide lenders with an alternative path to making covered longer-term loans without satisfying the proposed ability-to-repay requirements and that the loan terms in proposed § 1041.12 would provide lenders with somewhat greater flexibility, relative to proposed § 1041.11, in the structure and pricing of loan products subject to a set of back-end protections. Additionally, the Bureau solicits comment on whether to prohibit lenders from taking a vehicle security interest in connection with a covered longer-term loan that would be exempt from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) under proposed § 1041.11.

11(b)(1)

Proposed § 1041.11(b)(1) would provide that the loan not be structured as open-end credit. The proposed limitation mirrors the NCUA requirement that Payday Alternative Loans be closed-end credit.[722] The Bureau believes that attempting to develop restrictions for open-end credit in proposed § 1041.11 would add undue complexity without providing appreciable benefit for consumers and that limiting the proposed conditional exemption from the ability-to-repay and payment notice requirements to closed-end loans would result in a simpler and more transparent transaction for both consumers and lenders. The Bureau therefore believes that this limitation would help ensure that, among other things, that this market operates fairly and transparently.

The Bureau solicits comment on whether to permit open-end loans to be made under this conditional exemption; whether lenders would choose to make open-end loans under this conditional exemption if permitted to do so; and what the benefit for consumers would be of permitting such loans and what additional conditions may then be appropriate for proposed § 1041.11.

11(b)(2)

Proposed § 1041.11(b)(2) would limit the conditional exemption to covered longer-term loans with a duration of not more than six months. The proposed limitation mirrors the NCUA requirement that Payday Alternative Loans have a maximum duration of six months.[723] In finalizing the Payday Alternative Loan duration conditions, NCUA explained that "[the NCUA Board] is concerned that longer term loans may actually have unintended negative consequences" and that Federal credit unions should structure these loans "in a way that allows a borrower to repay the loan in the given term." [724] The Bureau believes that the NCUA limitation on maximum duration is appropriate to maintain in the context of the other protections under § 1041.11 and would help ensure that, among other things, consumers are protected from unfair or abusive practices and this market operates efficiently to facilitate access to credit. In contrast, proposed § 1041.12 would permit loans with a duration longer than six months, subject to the conditions in that section.

The Bureau solicits comment on whether to include a maximum duration for loans under § 1041.11 and, if so, whether six months is an appropriate maximum duration. The Bureau further solicits comment on the extent to which the maximum duration condition would affect whether lenders would make loans under § 1041.11.

11(b)(3)

Proposed § 1041.11(b)(3) would limit the conditional exemption to covered longer-term loans with a principal of not less than $200 and not more than $1,000. The proposed loan principal conditions mirror the NCUA loan principal requirements for Payday Alternative Loans.[725] The Bureau is aware that some lenders, as expressed during the SBREFA process, believe the proposed loan principal conditions would unduly restrict the types of longer-term loans that could be made under this conditional exemption. The Bureau is concerned that larger loans, when accompanied with a leveraged payment mechanism, may present more risks to consumers. The Bureau also notes that larger loans may make it easier for lenders to absorb the costs of conducting an ability-to-repay determination and providing payment notice in accordance with proposed § 1041.15(b). In proposing the minimum principal requirement for Payday Alternative Loans, the NCUA observed that there is a demand for loans of $200.[726] The Bureau believes that it would not be consistent with the purposes of Title X of the Dodd-Frank Act to expand the conditional exemption and believes that this limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices and this market operates efficiently to facilitate access to credit. The Bureau also notes that proposed § 1041.12 would permit lenders to make larger covered longer-term loans under that proposed conditional exemption.

The Bureau solicits comment on whether to include a minimum principal amount and, if so, whether $200 is the appropriate minimum principal. The Bureau also solicits comment on whether to include a maximum principal amount and, if so, whether $1,000 is the appropriate maximum principal. The Bureau further solicits comment on the extent to which principal amount conditions would affect whether lenders would make loans under § 1041.11.

11(b)(4)

Proposed § 1041.11(b)(4) would limit the conditional exemption to loans that are repayable in two or more payments due no less frequently than monthly, due in substantially equal amounts, and due in substantially equal intervals. Proposed § 1041.11(b)(4) reflects the NCUA guidance for the repayment structure of Payday Alternative Loans.[727] The Bureau is concerned that consumers may struggle to repay a loan due in a single payment, therefore suffering harms from becoming delinquent or defaulting on the loan or taking steps to avoid default on the covered loan and jeopardizing their ability to meet other financial obligations or basic living expenses.

Proposed comment 11(b)(4)-1 clarifies that payments may be due with greater frequency, such as biweekly. Proposed comment 11(b)(4)-2 clarifies that payments would be substantially equal in amount if each scheduled payment is equal to or within a small variation of the others. Proposed comment 11(b)(4)-3 clarifies that the intervals for scheduled payments would be substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days and also that lenders may disregard the effects of slight changes in the calendar. Proposed comment 11(b)(4)-3 further clarifies that proposed § 1041.11(b)(4) would not prohibit a lender from accepting prepayment on a loan made under § 1041.11.

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[722] 12 CFR 701.21(c)(7)(iii)(A).

[723] 12 CFR 701.21(c)(7)(iii)(A)(2).

[724] 75 FR 58285, 58286 (September 24, 2010).

[725] 12 CFR 701.21(c)(7)(iii)(A)(1).

[726] 75 FR 24497, 24499 (May 5, 2010).

[727] 12 CFR 701.21(c)(7)(iii)(A)(5); 75 FR 58285, 58287 (Sept. 24, 2010).

Extended periods without a scheduled payment could subject the consumer to a payment shock when the eventual payment does come due, potentially prompting the need to reborrow, default, or suffer collateral harms from unaffordable payments. In contrast, monthly payments, when amortizing as discussed below, may facilitate repayment of the debt over the contractual term. Regularity of payments is particularly important given the exemption from the payment notice requirement of proposed § 1041.15(b).

Additionally, as discussed in the section-by-section analysis of proposed § 1041.9(b)(2)(ii), the Bureau believes that loans with balloon payments pose particular risk to consumers. For example, the Bureau found that vehicle title loans with a balloon payment were much more likely to end in default, compared to fully amortizing installment vehicle title loans and that the approach of the balloon payment coming due was associated with significant reborrowing.[728] Given these considerations, the Bureau proposes to restrict the proposed conditional exemption from the proposed ability-to-repay and payment notice requirements to loans that have two or more payments due no less frequently than monthly and that do not have a balloon payment. The Bureau believes that the conditions in proposed § 1041.11(b)(4) may be appropriate to reduce the risk of injury from an inability to satisfy payment obligations or loss of budgeting control associated with a loan under § 1041.11. Accordingly, the Bureau believes that the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on whether the repayment structure requirements are appropriate for this conditional exemption. In particular, the Bureau solicits comment on whether two is the appropriate minimum number of payments; and, if not, what would be the justification for more or fewer minimum payments. Additionally, the Bureau solicits comment on whether the proposed standards for substantially equal payments and substantially equal intervals provide sufficient guidance to lenders.

11(b)(5)

Proposed § 1041.11(b)(5) would limit the conditional exemption to loans that amortize completely over the loan term and would define the manner in which lenders must allocate consumer payments to amounts owed. The proposed amortization requirement for loans under § 1041.11 reflects the NCUA requirement that Payday Alternative Loans fully amortize over the loan term.[729] Proposed comment 11(b)(5)-1 clarifies that the interest portion of each payment would need to be computed by applying a periodic interest rate to the outstanding balance due.

A fully amortizing loan facilitates consumer repayment of the loan principal from the beginning of repayment. This progress toward repayment means that a consumer who later faces difficulty making payments on such a loan will be better positioned to refinance on favorable terms or eventually retire the debt than would a consumer that had not made any progress repaying the loan principal. In finalizing the amortization requirement for Payday Alternative Loans, the NCUA noted that "requiring FCUs to fully amortize the loans will allow borrowers to make manageable payments over the term of the loan." [730] The Bureau believes that the amortization requirement would provide an important protection for loans conditionally exempt from the proposed ability-to-repay and payment notice requirements: a steady amortization structure that applies a portion of each payment to principal and to interest and fees as they accrue and for which interest is calculated only by applying a fixed periodic rate to the outstanding balance of the loan facilitates consumer repayment of the loan and minimizes the risk of harm to a consumer in the event that a loan is unaffordable. Accordingly, the Bureau believes that the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on whether an amortization requirement in proposed § 1041.11 is appropriate; if so, whether the amortization method that the Bureau would require in proposed § 1041.11(b)(5) is appropriate for this conditional exemption; and, if not, what alternative method or methods should be required for loans made under proposed § 1041.11.

11(b)(6)

Proposed § 1041.11(b)(6) would limit the conditional exemption to loans that carry a total cost of credit of not more than the cost permissible for Federal credit unions to charge under NCUA regulations for Payday Alternative Loans. For Payday Alternative Loans, NCUA permits Federal credit unions to charge an interest rate of 1,000 basis points above the maximum interest rate established by the NCUA Board, and an application fee of not more than $20.[731] Proposed comment 11(b)(6)-1 clarifies that proposed § 1041.11(b)(6) means that lenders must not charge any fees other than the interest rate and fees permitted for Federal credit unions under the NCUA regulations. As the NCUA explained in finalizing the amount of the permissible application fee for Payday Alternative Loans, "[Regulation Z] limits application fees to the recovery of costs associated with processing applications for credit that are charged to all consumers who apply . . . a maximum application fee of $20 is sufficient to allow FCUs to recoup the costs associated with processing an application for [a Payday Alternative Loan]." [732]

By tying this conditional exemption to the judgment NCUA made with respect to the cost of credit, the proposed cost condition for loans under § 1041.11 would not establish a Federal usury limit, as the Bureau is not proposing to prohibit charging interest rates or APRs above the demarcation in proposed § 1041.11(b)(6). Rather, covered longer-term loans carrying a total cost of credit more than the cost in proposed § 1041.11(b)(6) could be made under § 1041.9, and comply with proposed §§ 1041.10 and 1041.15(b). The Bureau believes that by reflecting the cost criteria of the NCUA Payday Alternative Loan program, the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices and this market operates efficiently to facilitate access to credit.

The Bureau solicits comment on whether to limit the conditional exemption to loans meeting certain cost criteria; and, if so, whether the NCUA cost limitation would be appropriate or what alternative cost limitation should be required for loans made under proposed § 1041.11.

11(c) Borrowing History Condition

Proposed § 1041.11(c) would exclude from the conditional exemption a loan that would otherwise satisfy the conditions of proposed § 1041.11 if the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates within a period of 180 days. Proposed § 1041.11(c) would require a lender to review its own records and the records of its affiliates prior to making a loan under proposed § 1041.11 to determine that the loan would not result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates within a period of 180 days. Proposed § 1041.11(c) generally mirrors the NCUA requirement that a Federal credit union not make more than three Payday Alternative Loans to any one consumer in a rolling 6-month period.[733]

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[728] *CFPB Report on Supplemental Findings*, at 30-32.

[729] 12 CFR 701.21(c)(7)(iii)(A)(5).

[730] 75 FR 58285, 58287 (Sept. 24, 2010).

[731] 12 CFR 701.21(c)(7)(iii).

[732] 75 FR 58285, 58287 (Sept. 24, 2010).

Proposed comment 11(c)-1 clarifies that a lender needs to review only its own records and the records of its affiliates to determine the consumer's borrowing history on covered longer-term loans under § 1041.11 and does not need to obtain information from other, unaffiliated lenders or a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2). Proposed comment 11(c)-2 clarifies the manner in which a lender must calculate the 180-day period for the purposes of proposed § 1041.11(c). Proposed comment 11(c)-3 clarifies that proposed § 1041.11(c) would not limit the ability of lenders to make additional covered loans subject to the proposed ability-to-repay requirements or to one of the other proposed conditional exemptions. Proposed comment 11(c)-4 provides an illustrative example.

The Bureau also considered, and included in the Small Business Review Panel Outline, a proposal to limit the maximum number of loans made under § 1041.11 to two in a 6-month period. Additionally, subsequent to the release of the Small Business Review Panel Outline, the Department of Defense finalized regulations under the Military Lending Act that effectively permits a Federal credit union subject to the requirements of the Federal Credit Union Act and NCUA regulations to make one Payday Alternative Loan to a servicemember or dependent during a rolling 12-month period without exceeding the Military Lending Act's limitation on the cost of consumer credit.[734]

During the SBREFA process and other engagement, particularly with Federal credit unions, the Bureau received feedback indicating that layering an additional borrowing history condition on the NCUA Payday Alternative Loan requirements would impose burden on lenders currently offering these loans and would reduce the likelihood that lenders would choose to offer loans made under § 1041.11 if the Bureau's proposal is finalized. Accordingly, the Bureau is proposing a borrowing history condition that mirrors this component of the NCUA Payday Alternative Loan condition. The Bureau believes that the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices and consumers have access to this market.

In addition, the Bureau considered, and included in the Small Business Review Panel Outline, two additional borrowing history conditions for loans under § 1041.11. The Bureau considered prohibiting lenders from making a loan under § 1041.11 to a consumer if the consumer had any other covered loan outstanding. The Bureau also considered incorporating another NCUA requirement related to borrowing history that prohibits Federal credit unions from making more than one Payday Alternative Loans at a time to a consumer.[735]

The Bureau believes that measures to minimize the burden on lenders making loans under § 1041.11 may further the purposes of this proposed conditional exemption because the conditional exemption is intended to facilitate access to credit that is relatively lower-cost than other credit that would be covered by the Bureau's proposals. To that end, the Bureau believes that limiting the number of loans under § 1041.11 from the same lender or its affiliates—rather than from all lenders—would appropriately balance the consumer protection and access to credit objectives for this conditional exemption.

The Bureau is not proposing to incorporate the NCUA limitation on a lender making more than one Payday Alternative Loan at a time to a consumer. In proposing this requirement, the NCUA Board stated its belief that the restriction would, in concert with the other borrowing history limitations, "curtail a member's repetitive use and reliance on [payday alternative loans]." [736] However, loans under the NCUA program are available only to members of the credit union, thereby providing a natural limit on the likelihood that a consumer would obtain such loans from multiple lenders. In contrast, the Bureau's exemption for loans under § 1041.11 would be available to all lenders in jurisdictions permitting such lending. Without the membership requirements of a credit union, the Bureau believes that a per-lender limit on concurrent loans is unlikely to yield meaningful consumer protections because a consumer could go to a different lender.

Similarly, the Bureau is not proposing to incorporate the NCUA prohibition on rolling over a Payday Alternative Loan. The Bureau believes that the requirements related to the structure of repayment in proposed § 1041.11(b)(4) and (b)(5) means that borrowers are unlikely to face a payment that prompts the need to rollover a loan under § 1041.11. While the Bureau is concerned about repeat borrowing—including rollovers—on covered loans, the Bureau does not believe that the NCUA limitation is necessary in the context of the other conditions and requirements that the Bureau is proposing in § 1041.11.

The Bureau solicits comment on whether the borrowing history condition in proposed § 1041.11(c) is appropriate; whether three loans in a 180-day period achieves the objectives of Title X of the Dodd-Frank Act, including the consumer protection and access to credit objectives; and whether a different limitation, such as two loans in a 180-day period, would better achieve those objectives.

Additionally, the Bureau solicits comment on whether to also include other borrowing history conditions. In particular, the Bureau solicits comment on whether a per-lender limitation on concurrent loans would be appropriate for this conditional exemption and on whether a prohibition on rolling over a loan would be appropriate for this conditional exemption. The Bureau also solicits comment on whether to prohibit lenders from making concurrent loans under § 1041.11; whether to prohibit lenders from making a loan under § 1041.11 to a consumer with an outstanding covered loan of any type, either with the same lender or its affiliates or with any lender. In this regard, the Bureau solicits comment on whether to require lenders to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) prior to making a loan under § 1041.11 and on the costs that such a requirement if finalized, would impose on lenders, including small entities, making loans under the conditional exemption.

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[733] 12 CFR 701.21(c)(7)(iii)(A)(3).

[734] 32 CFR 232.4(c)(iii)(B).

[735] 12 CFR 701.21(c)(7)(iii)(A)(3).

[736] 75 FR 24497, 24499 (May 5, 2010) (Proposed Rule); 75 FR 58285, 58287 (Sept. 24, 2010) (Final Rule).

11(d) Income Documentation Condition

Proposed § 1041.11(d) would require lenders to maintain policies and procedures for documenting proof of a consumer's recurring income and to comply with those policies and procedures in making loans under § 1041.11. Proposed § 1041.11(d) reflects one component of the NCUA requirement that Federal credit unions implement appropriate underwriting guidelines for Payday Alternative Loans, and instructing that underwriting standards should address required documentation for proof of employment or income.[737] Proposed comment 11(d)-1 clarifies that proposed § 1041.11(d) would not require lenders to comply with the same procedures for loans under § 1041.11 as would be required under proposed § 1041.9(c)(3) for the ability-to-repay determination. Proposed comment 11(d)-1 further clarifies that § 1041.11(d) would permit lenders to use any procedure for documenting proof of recurring income that satisfies the lender's own underwriting obligations.

In the Small Business Review Panel Outline, the Bureau included a proposal that would require lenders to apply minimum underwriting standards and to verify income prior to making a loan under § 1041.11. Such standards would mirror the NCUA Payday Alternative Loan program guidance. However, the Bureau believes that appropriate underwriting standards for covered longer-term loans, including income verification procedures, are expressed in proposed §§ 1041.9 and 1041.10 and that imposing such conditions for loans under § 1041.11 would be inconsistent with the Bureau's objective of providing an alternative path for making covered longer-term loans without undertaking the proposed ability-to-repay determination. Accordingly, the Bureau is proposing a requirement that a lender maintain and comply with policies and procedures regarding income documentation for loans under § 1041.11 as a minimum safeguard against unaffordable loans, but proposed § 1041.11(d) would be a more flexible standard than that in § 1041.9(c)(3), would not specify the manner in which a lender would be required to document proof of recurring income, and would not impose minimum underwriting standards for loans under § 1041.11. The Bureau believes this requirement would help ensure that, among other things, consumers have access to this market.

The Bureau solicits comment on whether the income documentation condition in proposed § 1041.11(d) is appropriate; the costs that the proposed requirement would impose, if finalized, on lenders, including small entities; whether the requirement should specify the manner in which lenders must document income; and whether the requirement should include a minimum amount of income that must be documented.

11(e) Additional Requirements

Proposed § 1041.11(e) would impose additional requirements related to loans made under § 1041.11. The Bureau solicits comment on each of the requirements described below, including on the burden such requirements, if finalized, would impose on lenders, including small entities, making loans under § 1041.11. The Bureau also seeks comment on whether other or additional requirements would be appropriate for loans under § 1041.11 in order to fulfill the objectives of Title X of the Dodd-Frank Act, including the objectives related to consumer protection and access to credit.

11(e)(1)

Proposed § 1041.11(e)(1) would prohibit lenders from taking certain additional actions with regard to a loan made under § 1041.11. The Bureau solicits comment on whether the prohibitions are appropriate to advance the objectives of Title X of the Dodd-Frank Act and whether other actions should also be prohibited in connection with loans made under § 1041.11.

11(e)(1)(i)

Proposed § 1041.11(e)(1)(i) would prohibit lenders from imposing a prepayment penalty in connection with a loan made under § 1041.11. The Bureau is not proposing in this rulemaking to determine all instances in which prepayment penalties may raise consumer protection concerns. However, the Bureau believes that for loans qualifying for a conditional exemption under proposed § 1041.11, penalizing a consumer for prepaying a loan would be inconsistent with the consumer's expectation for the loan and may prevent consumers from repaying debt that they otherwise would be able to retire.

The Bureau also believes that this proposed restriction is consistent with the practices of Federal credit unions making loans under NCUA's Payday Alternative Loan Program. In light of these considerations, the Bureau believes that the proposed condition would help ensure that, among other things, consumers are protected from unfair or abusive practices and that this market operates transparently and efficiently.

The Bureau solicits comment on the extent to which the requirement in proposed § 1041.11(e)(1)(i) is appropriate and on any alternative ways of defining the prohibited conduct that would provide adequate protection to consumers while encouraging access to credit.

11(e)(1)(ii)

Proposed § 1041.11(e)(1)(ii) would prohibit lenders that hold a consumer's funds on deposit from, in response to an actual or expected delinquency or default on the loan made under proposed § 1041.11, sweeping the account to a negative balance, exercising a right of set-off to collect on the loan, or closing the account. Proposed comment 11(e)(1)(ii)-1 clarifies that the prohibition in § 1041.11(e)(1)(ii) applies regardless of the type of account in which the consumer's funds are held and also clarifies that the prohibition does not apply to transactions in which the lender does not hold any funds on deposit for the consumer. Proposed comment 11(e)(1)(ii)-2 clarifies that the prohibition in § 1041.11(e)(1)(ii) does not affect the ability of the lender to pursue other generally-available legal remedies; the proposed clarification is similar to a provision in the Bureau's Regulation Z, 1026.12(d)(2).

Because loans under § 1041.11 would be exempt from the proposed ability-to-repay and payment notice requirements, the Bureau is concerned that in the event that a lender holds a consumer's funds on deposit and the loan turns out to be unaffordable to the consumer, the potential injury to a consumer could be exacerbated if the lender takes actions that cause the consumer's account to go to a negative balance or closes the consumer's account. Accordingly, the Bureau believes that the proposed prohibition would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on whether the prohibition in proposed § 1041.11(e)(1)(ii) would be appropriate and, alternatively, whether other restrictions related to treatment of a consumer's account held by a lender that makes a loan under § 1041.11 to the consumer would be appropriate. The Bureau also solicits comment, in particular from banks and credit unions or other lenders that hold consumer funds, on current practices taken in response to actual or expected delinquency or default related to sweeping consumer accounts to negative, exercising a right of set-off to collect on a loan, and closing consumer accounts. The Bureau recognizes that Federal credit unions are permitted under section 1757(11) of the Federal Credit Union Act to "impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him"; the Bureau solicits comment on whether the proposed prohibition would raise concerns, including safety and soundness concerns, for Federal credit unions and other depository institutions. Additionally, the Bureau solicits comment on whether the same or similar condition would be appropriate for transactions in which a lender does not hold a consumer's funds on deposit.

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[737] 12 CFR 701.21(c)(7)(iii)(B)(2). The Bureau also is not proposing to incorporate the NCUA Payday Alternative Loan program's limitation on outstanding Payday Alternative Loans as a percentage of a Federal credit union's net worth. The Bureau believes that this condition is intended to mitigate prudential risk to Federal credit unions of making short-term, higher-cost loans to consumers that present a greater credit risk. While important considerations, the Bureau is not proposing this condition as this rulemaking is not intended to establish prudential standards for creditors that make loans under § 1041.11.

11(e)(2)

Proposed § 1041.11(e)(2) would require lenders to furnish information concerning a loan made under § 1041.11 either to each information system described in § 1041.16(b) or to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Lenders could select which type of furnishing to do.

The Bureau considered, and included in the Small Business Review Panel Outline, a requirement that lenders obtain a consumer report from and furnish information concerning loans under § 1041.11 to registered information systems. During the SBREFA process and in outreach with industry and others, the Bureau received feedback from Federal credit unions and other lenders that such obligations would be a substantial burden and pose a barrier to making relatively small-dollar and relatively lower-cost loans. The Bureau understands that 75 percent of Federal credit unions that make Payday Alternative Loans include furnishing loan information to consumer reporting agencies in their program policies and procedures.[738] However, from outreach to credit unions, the Bureau understands that these institutions generally do not furnish loan information to or obtain consumer reports from specialty consumer reporting agencies.

As proposed in § 1041.11(e)(2), lenders would not be required to furnish information about loans made under § 1041.11 to information systems described in proposed § 1041.16(b) if the lender instead furnishes information about that loan to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The Bureau believes that this furnishing requirement strikes the appropriate balance between minimizing burden on lenders that would make loans under § 1041.11 and establishing a reasonably comprehensive record of a consumer's borrowing history with respect to these loans, which would be useful for the other provisions of the Bureau's proposed rule that require assessing the amount and timing of a consumer's debt payments. In light of these considerations, the Bureau believes that the proposed requirement would help ensure that, among other things, this market operates efficiently to facilitate access to credit.

The Bureau solicits comment on the proposed furnishing requirement in § 1041.11(e)(2) and on the costs that the proposed requirement would impose, if finalized, on lenders, including small entities. In particular, the Bureau solicits comment on whether to require lenders to furnish in the manner set forth in proposed § 1041.11(e)(2) or whether to relieve lenders from a requirement to furnish information concerning loans made under § 1041.11. In addition, the Bureau solicits comment on whether to require lenders to furnish to multiple consumer reporting agencies that compile and maintain files on consumers on a nationwide basis rather than only one. The Bureau also solicits comment on the extent to which lenders that currently make loans similar to those that would be permitted under proposed § 1041.11 currently furnish information to nationwide consumer reporting agencies or to specialty consumer reporting agencies.

11(e)(2)(i)

Proposed § 1041.11(e)(2)(i) would permit lenders to satisfy the requirement in § 1041.11(e)(2) by furnishing information concerning a loan made under § 1041.11 to each information system described in § 1041.16(b). Lenders furnishing in the manner provided for in proposed § 1041.11(e)(2)(i) would be required to furnish the loan information described in proposed § 1041.16(c).

11(e)(2)(ii)

Proposed § 1041.11(e)(2)(ii) would permit lenders to satisfy the requirement in § 1041.11(e)(2) by furnishing information concerning a loan made under § 1041.11 at the time of the lender's next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation, whichever is earlier. Proposed § 1041.11(e)(2)(ii) would further provide that "consumer reporting agency that compiles and maintains files on a consumers on a nationwide basis" has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Section 1041.12 Conditional Exemption for Certain Covered Longer-Term Loans of Up to 24 Months' Duration

Background

Proposed § 1041.12 would provide a conditional exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for certain covered longer-term loans that share certain features of loans made through accommodation lending programs and that are underwritten to achieve an annual portfolio default rate of not more than 5 percent. Proposed § 1041.12 would allow a lender to make a covered longer-term loan without making the ability-to-repay determination that would be required by proposed §§ 1041.9 and 1041.10 and without complying with the payment notice requirement of § 1041.15(b), provided that certain conditions and requirements are satisfied. The Bureau proposes this provision pursuant to its authority under section 1021 (b)(3) of the Dodd-Frank Act[739] to create conditional exemptions from rules issued under Title X of the Dodd-Frank Act.

Community banks and credit unions make a number of different types of underwritten loans to their customers. Based on the Bureau's engagement with industry, the Bureau understands that some of these underwritten consumer loans may be covered longer-term loans under the Bureau's proposed rule. The loans that would be covered longer-term loans tend to carry a relatively low periodic interest rate, but with an origination fee that would cause the total cost of credit to exceed 36 percent particularly with regard to smaller sized loans, and involve a leveraged payment mechanism or security interest in a vehicle title.[740] From outreach to lenders, the Bureau understands that, in general, these loans tend to be a relatively small percentage of a lender's total lending portfolio and are made as an accommodation for a community bank or credit union's existing customers. In this regard, as noted in the section-by-section analysis of proposed § 1041.2(a)(11), the Bureau is soliciting comment on whether to narrow the definition of lender based on the quantity of covered loans an entity offers, and, if so, how to define such a de minimis test.

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[738] NCUA Letter to Department of Defense (Dec. 16, 2014), at 5 (Dec. 16, 2014).

[739] 12 U.S.C. 5512(b)(3).

With proposed § 1041.12, the Bureau would allow the relatively lower-cost accommodation lending taking place today to continue without requiring lenders to undertake the ability-to-repay determination that would be required by proposed §§ 1041.9 and 1041.10 and without requiring lenders to comply with the payment notice requirement of proposed § 1041.15(b). The conditions for making a loan under § 1041.12 reflect certain requirements that the Bureau has observed are characteristic of relatively lower-cost loans made by many community banks as an accommodation to existing customers and limitations that the Bureau believes will minimize the risk of harm to consumers from a conditional exemption for certain covered longer-term loans. In particular, proposed § 1041.12 would provide a conditional exemption from the proposed ability-to-repay and payment notice requirements for closed-end covered longer-term loans underwritten in accordance with a underwriting method designed to result in a portfolio default rate of not more than 5 percent per year, carrying a modified total cost of credit of less than or equal to 36 percent, and meeting certain additional condition and requirements.

The Small Business Review Panel Report recommended that the Bureau solicit comment on additional options for alternative requirements for making covered longer-term loans without satisfying the proposed ability-to-repay requirements. Considering the feedback from SERs, the recommendation of the Small Business Review Panel Report, and observations from other outreach following publication of the Small Business Review Panel Outline, the Bureau is proposing an additional alternative path for making covered longer-term loans in proposed § 1041.12 and is soliciting comment on whether other alternatives also would be appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act.

The Bureau considered limiting the availability of the conditional exemption under proposed § 1041.12 to certain categories of financial institutions, potentially defined by size, preexisting customers relationship, or charter type. In proposing to permit all lenders to make covered longer-term loans under § 1041.12, the Bureau endeavors to facilitate access to credit, regardless of the size or charter status of the entity, within the important limits imposed by more protective State, local, and tribal laws. Extending the conditional exemption to all financial institutions that choose to make loans of the type provided for in § 1041.12 furthers that purpose.

The Bureau seeks comment generally on whether to provide a conditional exemption from the proposed ability-to-repay and payment notice requirements for covered longer-term loans sharing the features of accommodation lending, subject to the loan term conditions and underwriting method requirements in proposed § 1041.12. In particular, the Bureau solicits comment on whether proposed § 1041.12 would appropriately balance the concerns for access to credit and consumer protection; on the costs and other burdens that proposed § 1041.12 would, if finalized, impose on lenders, including small entities; and on each of the specific conditions and requirements under proposed § 1041.12, discussed below.

The Bureau seeks comment on whether a different set of conditions for covered longer-term loans exempt from the proposed ability-to-repay and payment notice requirements would more appropriately achieve the objectives of Title X of the Dodd-Frank Act, and, if so, what, specifically, such an alternative set of conditions would be. For example, as discussed below with regard to the alternative considered, the Bureau seeks comment on whether such an alternative should include a maximum payment-to-income ratio; the Bureau also seeks comment on whether such an alternative should include a maximum duration, minimum number of payments, amortization requirement, limitation on prepayment penalties and collections mechanisms, limitation on permissible cost structure, borrowing history conditions, or minimum underwriting requirements. The Bureau also seeks comment on whether to provide a conditional exemption for loans in a portfolio with low levels of delinquency or default measured as a portion of originated loans and, if so, what the appropriate metric for such a conditional exemption would be and what additional conditions and requirement may be appropriate for such a conditional exception. In addition, the Bureau solicits comment on the extent to which lenders interested in making a covered longer-term loan conditionally exempt from the proposed ability-to-repay and payment notice requirements anticipate making loans subject to the requirements of proposed § 1041.12, as compared to proposed § 1041.11.

Alternative Considered

The Bureau developed the proposed alternative path to making covered longer-term loans reflected in proposed § 1041.12 following feedback from SERs during the SBREFA process and other lenders in outreach following publication of the Small Business Review Panel Outline. Going into the SBREFA process, the Bureau had focused primarily on two proposals for alternative requirements for covered longer-term loans: The NCUA-type loan alternative, now reflected in proposed § 1041.11, and an alternative that would have permitted lending so long as the maximum payment-to-income ratio did not exceed a specified threshold, such as 5 percent, and the loan met certain other conditions and requirements.

The Bureau modeled the payment-to-income alternative on a proposal put forth by The Pew Charitable Trusts, a public policy research organization, based on analysis of the small dollar lending markets.[741] In considering the proposal for maximum payment-to-income loans included in the Small Business Review Panel Outline, the Bureau believed that this alternative would be a burden-reduction measure, particularly if many of these loans would also satisfy the ability-to-repay requirements.

The Bureau has received communications from over 30 credit unions, including several large credit unions, supportive of the 5 percent payment-to-income ratio alternative. Several large banks have also reported to the Bureau that they believe the 5 percent payment-to-income ratio would provide a workable underwriting rule for use in extending credit to their customers.

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[740] For example, the Independent Community Bankers of America (ICBA) provides one illustration of what the Bureau understands to be typical accommodation lending practices. ICBA reports that among its member banks that engage in accommodation lending, all review a consumer's history with the bank before making a loan, 91 percent verify a consumer's major financial obligations and debts, and 80 percent verify a consumer's income. ICBA also states that much of the banks' revenue from these loans comes from origination fees, with typical fees ranging from $28 to $94. ICBA Letter October 6, 2015.

[741] Pew Charitable Trusts, *Payday Lending in America: Policy Solutions*.

However, the Bureau also received feedback from some of the SERs asserting that the 5 percent payment-to-income ratio that the Bureau contemplated proposing was too low to allow the lenders to make a significant number of loans and that the maximum permissible duration was too short to be economically viable for their businesses. The Bureau also heard feedback from other lenders following publication of the Small Business Review Panel Outline echoing similar concerns. In particular, during the SBREFA process and subsequent outreach, the Bureau learned that neither of the alternative sets of requirements included in the Small Business Review Panel Outline would capture a category of loans being made by community banks and credit unions as an accommodation to existing customers and that do not appear to present a risk of the type of consumer injury that is the focus of the Bureau's proposed requirement to determine ability to repay. In evaluating the proposal, the Bureau became concerned that a payment-to-income ratio higher than 5 percent might be needed to provide sufficient flexibility to accommodate existing lending programs at many community banks and credit unions.

The Bureau also received feedback from some consumer groups asserting that the maximum payment-to-income alternative for making covered longer-term loans provided inadequate protections to minimize the risk that consumers would face a payment obligation that they could not afford and the risk of harm in the event of such inability to satisfy payment obligations. Some consumer groups expressed concern that even at 5 percent the maximum payment-to-income ratio was too high for some consumers to maintain for six months, the maximum loan duration being considered by the Bureau during the SBREFA process. These groups expressed still greater concern about the higher payment-to-income ratios sought by industry.

The Bureau's research does suggest that there is a correlation between the payment-to-income ratio and levels of default.[742] However, that research does not point to a clear inflection point below which the payment-to-income ratio leads to positive outcomes for consumers and above which it leads to negative outcomes. Moreover, at any payment-to-income threshold, there will be some consumers for whom a covered loan would be unaffordable; the Bureau believes that higher ratios could increase the risk of consumer injury from loans made under an alternative to the proposed ability-to-repay requirements.

Faced with these trade-offs, the Bureau developed proposed § 1041.12 as an alternative that it believes provides important structural conditions and back-end protections, while also permitting accommodation lenders a more flexible option than the conditional exemption under proposed § 1041.11. The Bureau notes, moreover, that to the extent that a particular payment-to-income ratio produces the result required under § 1041.12, a lender may include that ratio in the lender's underwriting methodology. The Bureau believes that proposed § 1041.12 would provide a conditional exemption for at least some lending programs that would satisfy a payment-to-income test and provide lenders with flexibility to develop alternative underwriting methods satisfying the specified low portfolio default rate outcomes. The Bureau believes the proposal would also provide consumers with important back-end protections in the event that a lender's underwriting does not achieve those portfolio default rate outcomes. In particular, the Bureau believes that this alternative would capture the category of loans discussed above that are being made by community banks and credit unions as an accommodation to existing customers and that do not appear to present a risk of the type of consumer injury that is the focus of the Bureau's proposed requirement to determine ability-to-repay.

At the same time, the Bureau recognizes that there may be lenders that would be prepared to make loans using a 5 percent payment-to-income alternative and that would not do so under the conditional exemption in proposed § 1041.12 because of the portfolio default rate requirement. Thus, while the Bureau is not proposing to create an alternative for loans with a maximum payment-to-income ratio, the Bureau broadly solicits comment on the advisability of such an approach. In particular, the Bureau solicits comment on whether providing an alternative path for making loans with a maximum payment-to-income ratio would be necessary or appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act; if so, what the appropriate payment-to-income ratio would be and what would be the basis for such a threshold; and what other consumer protections may be appropriate conditions as part of such an alternative path to lending. The Bureau further solicits comment on the extent to which lenders would make loans subject to a maximum payment-to-income ratio and not subject to the proposed ability-to-repay and notice requirements.

Legal Authority

Proposed § 1041.12 would establish an alternative set of requirements for covered short-term loans that, if complied with by lenders, would conditionally exempt them from the unfair and abusive practice identified in proposed § 1041.8, the ability-to-repay requirements under proposed §§ 1041.9 and 1041.10, and the payment notice requirement of proposed § 1041.15(b). The Bureau is proposing the requirements of proposed § 1041.12 pursuant to the Bureau's authority under Dodd-Frank Act section 1022(b)(3)(A) to grant conditional exemptions in certain circumstances from rules issued by the Bureau under the Bureau's Dodd-Frank Act legal authorities.

Dodd-Frank Act section 1022(b)(3)(A) authorizes the Bureau to, by rule, "conditionally or unconditionally exempt any class of . . . consumer financial products or services" from any provision of Title X of the Dodd-Frank Act or from any rule issued under Title X as the Bureau determines "necessary or appropriate to carry out the purposes and objectives" of Title X. The purposes of Title X are set forth in Dodd-Frank Act section 1021(a),[743] which provides that the Bureau shall implement and, where applicable, enforce Federal consumer financial law consistently "for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that [such markets] are fair, transparent and competitive."

The objectives of Title X are set forth in Dodd-Frank Act section 1021(b).[744] Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services: (1) Consumers "are provided with timely and understandable information to make responsible decisions about financial transactions" (*see* Dodd-Frank Act section 1021(b)(1));[745] (2) consumers "are protected from unfair, deceptive, or abusive acts and practices and from discrimination" (*see* Dodd-

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[742] *See CFPB Report on Supplemental Findings*, at 22-29.

[743] 12 U.S.C. 5511(a).

[744] 12 U.S.C. 5511(b).

[745] 12 U.S.C. 5511(b)(1).

Frank Act section 1021(b)(2)); [746] (3) "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens" (*see* Dodd-Frank Act section 1021(b)(3)); [747] (4) "Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair completion" (*see* Dodd-Frank Act section 1021(b)(4)); [748] and "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation" (*see* Dodd-Frank Act section 1021(b)(5)).[749]

When issuing an exemption under Dodd-Frank Act section 1022(b)(3)(A), the Bureau is required under Dodd-Frank Act section 1022(b)(3)(B) to take into consideration, as appropriate, three factors. These enumerated factors are: (1) The total assets of the class of covered persons; [750] (2) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; [751] and (3) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[752]

In general, the Bureau believes that providing a conditional exemption from proposed §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for certain covered longer-term loans sharing the features of certain loans made through accommodation lending programs would help preserve access to credit in this market for consumers while providing important protections for consumers. The proposed conditional exemption would be a partial exemption meaning that loans under § 1041.12 would still be subject to all other provisions of the Bureau's proposed rule; for example, lenders would still be required to comply with the limitation on payment transfer attempts in proposed § 1041.14, the consumer rights notice in proposed § 1041.15(d), and the compliance program and record retention requirements in proposed § 1041.18.

The Bureau believes that proposed § 1041.12 would reduce the cost of compliance with the Bureau's proposal, if finalized, for lenders that would make covered longer-term loans meeting the proposed conditions by relieving lenders of the obligation to satisfy the requirements of proposed §§ 1041.9, 1041.10, and 1041.15(b). The Bureau believes that the conditional exemption in proposed § 1041.12 is necessary or appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act, including ensuring that "all consumers have access to markets for consumer financial products and services" and that these markets "operate transparently and efficiently to facilitate access and innovation." [753] Specifically, the proposed conditional exemption is designed to facilitate access to credit by permitting lenders an alternative option for making covered longer-term loans, subject to important structural, cost, and borrowing history limitations.[754]

The Bureau believes that these loans are a lower-cost, safer alternative in the market for payday, vehicle title, and installment loans and that many of these loans, while likely affordable to the consumer, are underwritten based on the financial institution's understanding of a consumer's financial situation without using a process that would satisfy the proposed ability-to-repay requirements under §§ 1041.9 and 1041.10. These loans, while covered longer-term loans under the Bureau's proposal, generally would be on the border of the cost threshold for coverage and contain important structural protections. In addition, the Bureau has not observed evidence that lenders making such accommodation loans participate in widespread questionable payment practices that warrant the proposed payment notice requirement in § 1041.15(b). The Bureau therefore believes that a conditional exemption for underwritten loans subject to certain structural, cost, and borrowing history limitations is necessary or appropriate to carry out the purposes and objectives of Title X of the Dodd-Frank Act, including the objective of making credit available to consumers in a fair and transparent manner.

In consideration of these factors, the Bureau is proposing in § 1041.12 to provide lenders with an additional degree of flexibility to make these loans using the lender's own underwriting procedures, if the lender's loan portfolio meets specified outcomes. In particular, the Bureau proposes to provide an exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for covered longer-term loans repaid in even and amortizing payments, meeting other conditions and requirements as to loan terms, borrowing history, and collection methods, subject to cost limitations, and underwritten with a methodology that produces low portfolio default rates.

The Bureau seeks comment on whether the Bureau should rely upon the Bureau's statutory exemption authority under Dodd-Frank Act section 1022(b)(3)(A) to exempt loans that satisfy the requirements of proposed § 1041.12 from the unfair and abusive practice identified in proposed § 1041.8, the ability-to-repay requirements proposed under §§ 1041.9 and 1041.10, and the payment notice requirement proposed under § 1041.15(b). Alternatively, the Bureau seeks comment on whether the requirements under proposed § 1041.12 should instead be based on the Bureau's authority under Dodd-Frank Act section 1031(b) to prescribe rules identifying as unlawful unfair, deceptive, or abusive practices and to include in such rules requirements for the purpose of preventing such acts or practices. In particular, the Bureau requests comment on whether loans made under proposed § 1041.12 should be expressly excluded from the identification of the unfair and abusive practice rather than exempted therefrom or whether the requirements for loans made under proposed § 1041.12 should be considered requirements for preventing unfair and abusive practices.

12(a) Conditional Exemption for Certain Covered Longer-Term Loans

Proposed § 1041.12(a) would provide a conditional exemption from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) for covered longer-term loans satisfying the conditions and requirements in § 1041.12(b) through (f). Proposed § 1041.12(a) would not provide an exemption from any other provision of law. For example, proposed § 1041.12(a) would not permit loans to servicemembers and their dependents that would violate the Military Lending Act and its implementing regulations.

Proposed comment 12(a)-1 clarifies that, subject to the requirements of other applicable laws, § 1041.12(a) would permit all lenders to make loans under § 1041.12. Proposed comment 12(a)-1 further clarifies that § 1041.12(a) applies only to covered longer-term loans and so loans under § 1041.12 would have a duration of more than 45 days.

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[746] 12 U.S.C. 5511(b)(2).

[747] 12 U.S.C. 5511(b)(3).

[748] 12 U.S.C. 5511(b)(4).

[749] 12 U.S.C. 5511(b)(5).

[750] 12 U.S.C. 5512(b)(3)(B)(i).

[751] 12 U.S.C. 5512(b)(3)(B)(ii).

[752] 12 U.S.C. 5512(b)(3)(B)(iii).

[753] 12 U.S.C. 5511(a), (b)(5).

[754] The Bureau has taken the statutory factors listed in 12 U.S.C. 5512(b)(3)(B) into consideration. The Bureau has concluded that it is not able, in this instance, to incorporate the first two of these factors into its justification for the proposed exemption because these factors are relevant to an exemption of a class of covered persons, whereas proposed § 1041.12 would exempt a class of transactions from certain requirements of the proposed rule. The third factor is not materially relevant because the Bureau is unaware of existing law that provides adequate protections for consumers similar to those provided in proposed § 1041.12.

The Bureau is concerned that, given the financial circumstances of many borrowers, it may be difficult for many borrowers to repay a covered short-term loan without the need to reborrow in short order. The Bureau is proposing a separate alternative path for covered short-term loans under proposed § 1041.7, which would permit borrowers to obtain up to three back-to-back covered short-term loans with gradual reduction of the loan principal. The Bureau believes that restricting the availability of the proposed conditional exemption under § 1041.12 to covered longer-term loans would permit lenders an alternative way to make relatively lower-cost loans without disrupting the core features of the Bureau's proposed framework for regulation in the affected markets.

12(b) Loan Term Conditions

Proposed § 1041.12(b) would require loans under § 1041.12 to meet certain conditions as to the loan terms. Each proposed condition for a loan under § 1041.12 is described below. The Bureau solicits comment on all aspects of the loan term conditions, including on the burden such conditions, if finalized, would impose on lenders, including small entities, making loans under § 1041.12. The Bureau also seeks comment on whether other or additional loan term conditions would be appropriate to carry out the objectives of Title X of the Dodd-Frank Act, including the consumer protection and access to credit objectives. Additionally, the Bureau solicits comment on whether to prohibit lenders from taking a vehicle security interest in connection with a covered longer-term loan that would be exempt from §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) under proposed § 1041.12.

12(b)(1)

Proposed § 1041.12(b)(1) would provide that the loan not be structured as open-end credit. The Bureau believes that the accommodation lending occurring today is designed to enable borrowers to spread the cost of a specific expense over a period of time and therefore generally takes the form of a closed-end loan. Furthermore, as with the alternative path to making covered longer-term loans under proposed § 1041.11, the Bureau believes that attempting to develop restrictions for open-end credit in proposed § 1041.12 would add undue complexity without providing appreciable benefit for consumers and that limiting the proposed conditional exemption from the ability-to-repay and payment notice requirements to closed-end loans would result in a simpler and more transparent transaction for both consumers and lenders. The Bureau therefore believes that this limitation would help ensure that, among other things, this market operates fairly and transparently.

The Bureau solicits comment on whether to permit open-end loans to be made under this conditional exemption; whether lenders would choose to make open-end loans under this conditional exemption if permitted to do so; and what the benefit for consumers would be of permitting such loans and what additional conditions then may be appropriate for proposed § 1041.12.

12(b)(2)

Proposed § 1041.12(b)(2) would limit the conditional exemption to covered longer-term loans with a duration of not more than 24 months. The Bureau believes that this is consistent with current practice among lenders that make accommodation loans to existing customers and would help ensure that, among other things, consumers are protected from unfair or abusive practices and this market operates efficiently to facilitate access to credit. The Bureau also notes that the proposed durational limitation for loans under § 1041.12 would permit lenders to make considerably longer loans than the maximum six month loans that would be permitted under proposed § 1041.11.

The Bureau solicits comment on whether to include a maximum duration for loans under § 1041.12 and, if so, whether 24 months is an appropriate maximum duration or, alternatively, what the justification would be for a longer or shorter period of time. The Bureau further solicits comment on whether the maximum duration condition would affect whether lenders would make loans under § 1041.12.

12(b)(3)

Proposed § 1041.12(b)(3) would limit the conditional exemption to loans that are repayable in two or more payments due no less frequently than monthly, due in substantially equal amounts, and due in substantially equal intervals. The Bureau is concerned that consumers may struggle to repay a loan due in a single payment, therefore suffering harms from becoming delinquent or defaulting on the loan or taking steps to avoid default on the covered loan and jeopardizing their ability to meet other financial obligations or basic living expenses.

Proposed comment 12(b)(3)-1 clarifies that payments may be due with greater frequency, such as biweekly. Proposed comment 12(b)(3)-2 clarifies that payments would be substantially equal in amount if each scheduled payment is equal to or within a small variation of the others. Proposed comment 12(b)(3)-3 clarifies that the intervals for scheduled payments would be substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days and also that lenders may disregard the effects of slight changes in the calendar. Proposed comment 12(b)(3)-3 further clarifies that proposed § 1041.12(b)(3) would not prohibit a lender from accepting prepayment on a loan made under § 1041.12.

Extended periods without a scheduled payment could subject the consumer to a payment shock when the eventual payment does come due, potentially prompting the need to reborrow, default, or suffer collateral harms from unaffordable payments. In contrast, monthly payments, when amortizing as discussed below, may facilitate repayment of the debt over the contractual term. Regularity of payments is particularly important given the exemption from the payment notice requirement of proposed § 1041.15(b).

Additionally, as discussed in the section-by-section analysis of proposed § 1041.9(b)(2)(ii), the Bureau believes that loans with balloon payments pose particular risk to consumers. For example, the Bureau found that vehicle title loans with a balloon payment are much more likely to end in default compared to amortizing installment vehicle title loans and that the approach of the balloon payment coming due is associated with significant reborrowing.[755] Given these considerations, the Bureau proposes to restrict the conditional exemption from the proposed ability-to-repay and payment notice requirements to loans that have two or more payments due no less frequently than monthly and that do not have a balloon payment. The Bureau believes that the conditions in proposed § 1041.12(b)(3) may be appropriate to reduce the risk of injury from an inability to satisfy payment obligations or loss of budgeting control associated with a loan under § 1041.12. Accordingly, the Bureau believes that the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices.

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[755] *CFPB Report on Supplemental Findings*, at 30-34.

The Bureau solicits comment on whether the repayment structure requirements are appropriate for this conditional exemption. In particular, the Bureau solicits comment on whether two is the appropriate minimum number of payments; and, if not, what would be the justification for more or fewer minimum payments. Additionally, the Bureau solicits comment on whether the proposed standards for substantially equal payments and substantially equal intervals provide sufficient guidance to lenders.

12(b)(4)

Proposed § 1041.12(b)(4) would limit the conditional exemption to loans that amortize completely over the loan term and would define the manner in which lenders must allocate consumer payments to amounts owed. The Bureau believes this limitation is consistent with current practice among community banks and credit unions making what would be covered longer-term loans as an accommodation to existing customers. Proposed comment 12(b)(4)-1 clarifies that the interest portion of each payment would need to be computed by applying a periodic interest rate to the outstanding balance due.

A fully amortizing loan facilitates consumer repayment of the loan principal from the beginning of repayment. This progress toward repayment means that a consumer who later faces difficulty making payments on such a loan will be better positioned to refinance on favorable terms or eventually retire the debt than would a consumer who had not made any progress repaying the loan principal. The Bureau believes that the amortization requirement would provide an important protection for loans conditionally exempt from the proposed ability-to-repay and payment notice requirements: a steady amortization structure that applies a portion of each payment to principal and to interest and fees as they accrue and for which interest is calculated only by applying a fixed periodic rate to the outstanding balance of the loan facilitates consumer repayment of the loan and minimizes the risk of harm to a consumer in the event that a loan is unaffordable. Accordingly, the Bureau believes that the proposed limitation would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on whether an amortization requirement in proposed § 1041.12 is appropriate; if so, whether the amortization method that the Bureau would require in proposed § 1041.12(b)(4) is appropriate for this conditional exemption; and, if not, what alternative method or methods should be required for loans made under proposed § 1041.12.

12(b)(5)

Proposed § 1041.12(b)(5) would limit the conditional exemption to loans that carry a modified total cost of credit of less than or equal to an annual rate of 36 percent. Proposed § 1041.12(b)(5) would specify that the modified total cost of credit is calculated in the same manner as total cost of credit in § 1041.2(a)(18)(iii)(A), excluding from the calculation a single origination fee meeting the criteria in § 1041.12(b)(5)(i) or (ii). Under these provisions, the lender could exclude either a single origination fee that represents a reasonable proportion of the lender's cost of underwriting loans under § 1041.12 or a single origination fee of no more than $50, regardless of the lender's actual costs of underwriting loans under § 1041.12. Proposed comment 12(b)(5)-1 describes the effects of the proposed cost limitation in § 1041.12(b)(5) and clarifies that loans meeting the criteria for covered longer-term loans under § 1041.3(b)(2) and that have a modified total cost of credit in compliance with § 1041.12(b)(5) remain covered longer-term loans.

The proposed cost condition for loans under § 1041.12 would not establish a Federal usury limit, as the Bureau is not proposing to prohibit charging interest rates or APRs above the demarcation in proposed § 1041.12(b)(5). Rather, covered longer-term loans carrying a modified total cost of credit more than the cost in proposed § 1041.12(b)(5) could be made under proposed § 1041.9, and comply with proposed §§ 1041.10 and 1041.15(b). The Bureau believes that the proposed limitation of the conditional exemption would help ensure that, among other things, consumers are protected from unfair or abusive practices and this market operates efficiently to facilitate access to credit.

The proposed cost structure in § 1041.12(b)(5) is intended to accommodate existing market practices related to offsetting the cost of underwriting while providing lenders with certainty about permissible costs in order to facilitate lending under proposed § 1041.12. Through its market monitoring and outreach activities, the Bureau has observed that lenders that today make what would be covered longer-term loans as an accommodation to existing customers generally charge an origination fee on top of a relatively low periodic interest rate. To the extent that the total cost of credit, including the origination fee and the interest rate, as well as any other costs associated with the loan, would be lower than 36 percent, such loans would not be covered longer-term loans under proposed § 1041.3(b)(2). However, at least for loans with shorter terms and smaller amounts, the origination fee may cause the total cost of credit to exceed 36 percent, notwithstanding the relatively low periodic interest rate. Such loans would be covered longer-term loans if the lender also obtains a leveraged payment mechanism or vehicle security.

The Bureau considered whether, for purposes of proposed § 1041.12(b)(5), to also exclude from the calculation of modified total cost of credit the cost of insurance products with respect to the lender's vehicle security interest. The Bureau understands that some community banks, credit unions, and other installment lenders may require consumers to pay for such insurance products when extending an installment loan secured by a consumer's vehicle. The Bureau believes, however, that if the consumer is required to purchase an insurance product as well as pay an origination fee on the loan, the risks that the loan will be unaffordable increase and that excluding the costs of ancillary insurance products from the modified total cost of credit under § 1041.12(b)(5) is not appropriate.

The proposed conditional exemption in § 1041.12 would allow lenders offering relatively low-cost loans as a customer accommodation to continue to do so while still having a mechanism to recover their costs without having to create a fundamentally different pricing structure. In consideration of these factors, the Bureau proposes in § 1041.12(b)(5) to permit lenders greater flexibility to make a covered longer-term loan without satisfying the proposed ability-to-repay and payment notice requirements if the loan meets important limitations on cost. The Bureau believes that limiting the conditional exemption in this way may help reduce the risk of consumer injury from potentially unaffordable loans.

The Bureau solicits comment on whether to limit the conditional exemption to loans meeting certain cost criteria; and, if so, whether the proposed pricing structure for loans eligible for the proposed exemption in § 1041.12 is appropriate to achieve the objectives of Title X of the Dodd-Frank Act, including the consumer protection and access to credit objectives, or what alternative pricing structure should be required for loans made under proposed

§ 1041.12. Additionally, the Bureau solicits comment on whether to exclude from the calculation of modified total cost of credit the cost of an insurance product associated with a loan made under § 1041.12. The Bureau further solicits comment on what alternative requirements would provide sufficient consumer protection for loans under § 1041.12 if the cost limitation is not included.

The Bureau's understanding about existing fee structures is based on its market monitoring and engagement activities and does not cover the entirety of the market for loan products that may be accommodated under proposed § 1041.12. In this regard, the Bureau solicits feedback on origination fees on loans made through accommodation lending programs and the individual cost components reflected in those fees, including, among others, labor costs, document preparation costs, and any costs of using the applicable underwriting methodology.

12(b)(5)(i)

Proposed § 1041.12(b)(5)(i) would permit a lender to exclude from the modified total cost of credit a single origination fee that represents a reasonable proportion of the lender's costs of underwriting loans made under § 1041.12. Proposed comment 12(b)(5)(i)-1 clarifies the standards for an origination fee to be a reasonable proportion of the lender's costs of underwriting, including specifying that the origination fee must reflect the lender's costs of underwriting loans made under § 1041.12 and that the lender may make a single determination of underwriting costs for all loans made under § 1041.12.

The Bureau solicits comment on the proposed standards for an origination fee to be a reasonable proportion of the lender's costs of underwriting.

12(b)(5)(ii)

Proposed § 1041.12(b)(5)(ii) would provide a safe harbor for a lender to exclude from the modified total cost of credit a single origination fee of $50. Proposed comment 12(b)(5)(ii)-1 clarifies that a lender may impose a single origination fee of not more than $50 without determining the costs associated with underwriting loans made under § 1041.12.

The Bureau believes that lenders are more likely to make loans under § 1041.12 if regulatory uncertainty about the permissible origination fee is minimized. Providing a safe harbor for a single origination fee of up to $50 may therefore be appropriate to advance the objectives of Title X of the Dodd-Frank Act. The Bureau notes that for loans under $1,000, $50 was the median fee reported in the community bank survey described in part II.

The Bureau solicits comment on the proposed safe harbor for a single origination fee of $50, including whether such a safe harbor is appropriate and, if so, whether $50 is the appropriate amount for such a safe harbor.

12(c) Borrowing History Condition

Proposed § 1041.12(c) would exclude from the conditional exemption a loan that would otherwise satisfy the conditions of proposed § 1041.12 if the loan would result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates within a period of 180 days. Proposed § 1041.12(c) would require a lender to review its own records and the records of its affiliates prior to making a loan under proposed § 1041.12 to determine that the loan would not result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates within a period of 180 days.

Proposed comment 12(c)-1 clarifies that a lender needs to review only its own records and the records of its affiliates to determine the consumer's borrowing history on covered longer-term loans made under § 1041.12 and does not need to obtain information from other, unaffiliated lenders or a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2). Proposed comment 12(c)-2 clarifies the manner in which a lender must calculate the 180-day period for the purposes of proposed § 1041.12(c). Proposed comment 12(c)-3 clarifies that proposed § 1041.12(c) would not limit the ability of lenders to make additional covered loans subject to the proposed ability-to-repay requirements or to one of the other proposed conditional exemptions. Proposed comment 12(c)-4 provides an illustrative example.

The Bureau believes that the borrowing history condition and the 180-day condition appropriately protects consumers against the risk of injury from potentially unaffordable loans under proposed § 1041.12. The Bureau believes that if a consumer seeks more than two loans made under § 1041.12 within a period of six months, such circumstances suggest that the prior loans may not have been affordable. In such circumstances, the Bureau believes it would be inappropriate to allow the lender to continue to make covered longer-term loans under § 1041.12, without making an ability-to-repay determination pursuant to proposed §§ 1041.9 and 1041.10 and providing the payment notice required by proposed § 1041.15(b). Furthermore, in the Bureau's view, two origination fees in a six-month period would sufficiently address the costs that a lender may incur in underwriting a loan under § 1041.12, making it possible for the lender to continue to make additional loans without charging additional originations fees. In such an instance, assuming the lender does not increase the total cost of credit, such loans would not be covered longer-term loans.

In proposed § 1041.11, the Bureau proposes to permit lenders to make three loans under that conditional exemption within a 180-day period, rather than the two loan limit in proposed § 1041.12(c). The requirement in proposed § 1041.11 is intended to reflect the requirement of the NCUA Payday Alternative Loan program. Further, proposed § 1041.11 would be limited to loans with a smaller application fee than the origination fee that would be permitted under § 1041.12(b)(5) and with a lower periodic interest rate. Accordingly, the Bureau believes that it may be appropriate to permit more loans with greater frequency under proposed § 1041.11 than under proposed § 1041.12.

During the SBREFA process, Bureau considered, and included in the Small Business Review Panel Outline with regard to the maximum payment-to-income alternative, prohibiting lenders from making a loan under § 1041.12 to a consumer if the consumer had any other covered loan outstanding. The Bureau believes that measures to minimize the burden on lenders making loans under § 1041.12 may further the purposes of this proposed conditional exemption, which is intended to facilitate access to credit that is relatively lower-cost than other credit that would be covered by the Bureau's proposals. To that end, the Bureau believes that limiting the number of loans under § 1041.12 from the same lender or its affiliates—rather than from all lenders—would appropriately balance the consumer protection and access to credit objectives for this conditional exemption.

The Bureau solicits comment on whether the borrowing history condition in proposed § 1041.12(c) is appropriate; whether two loans in a 180-day period achieves the objectives of Title X of the Dodd-Frank Act, including the consumer protection and access to credit objectives; and whether a different limitation, such as one loan in a 180-day period or two loans in a 365-day period, would better achieve those objectives.

Additionally, the Bureau solicits comment on whether to also include other borrowing history conditions. In particular, the Bureau solicits comment on whether to prohibit lenders from making concurrent loans under § 1041.12; whether to prohibit lenders from making a loan under § 1041.12 to a consumer with an outstanding covered loan of any type, either with the same lender or its affiliates or with any lender. In this regard, the Bureau solicits comment on whether to require lenders to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) prior to making a loan under § 1041.12 and on the costs that such a requirement if finalized, would impose on lenders, including small entities, making loans under the conditional exemption.

12(d) Underwriting Method

Proposed § 1041.12(d) would require that lenders maintain and comply with their own policies and procedures for effectuating a method of underwriting loans made under § 1041.12 designed to result in a portfolio default rate of less than or equal to 5 percent per year on their portfolio of covered longer-term loans under § 1041.12. Proposed § 1041.12(d) would not specify the nature of the underwriting that a lender would be required to do; proposed comment 12(d)-1 clarifies that a lender's underwriting method may be based on the lender's prior experience or a lender's projections. Proposed § 1041.12(d)(1) would require lenders to calculate the portfolio default rate at least once every 12 months on an ongoing basis for loans made under § 1041.12. Proposed § 1041.12(d)(2) would require that if a lender's portfolio default rate for such loans exceeds 5 percent, the lender provides a timely refund of the origination fees charged on any loans included within the portfolio.

As discussed above, the Bureau understands that a variety of lenders—in particular, community banks and credit unions—regularly make to their existing customers loans that would be covered longer-term loans, generally underwrite such loans based on a variety of factors related to the lender's risk criteria and familiarity with the consumer, and that these loans are generally affordable to consumers, with low default and loss rates on those loans.[756] The Bureau believes that permitting lenders to make underwritten covered longer-term loans without determining the consumer's ability to repay in accordance with proposed §§ 1041.9 and 1041.10 but with certain other protective conditions in place may be appropriate in the event that the lender maintains and complies with an underwriting method designed to yield a low portfolio default rate.

The Bureau believes that for a conditional exemption to the general requirement to determine ability to repay, setting a portfolio default rate at a low threshold is appropriate in order to prevent the conditional exemption to be used for loans likely to create significant risk of consumer harm. Further, the lenders that have described to the Bureau their current accommodation lending programs have all reported that they achieve portfolio default rates well below at 5 percent. The Bureau therefore believes that 5 percent would be an appropriate portfolio default rate threshold for the purposes of the conditional exemption in § 1041.12.

As an important back-end protection, proposed § 1041.12(d) would also require that lenders provide a refund of origination fees if the lender's portfolio default rate exceeds 5 percent. The Bureau believes that this requirement would discourage attempts by lenders to avoid the 5 percent portfolio default rate limit and would provide a predictable remedy for poorly-performing portfolios. In addition, the Bureau believes that this requirement provides a relatively simple mechanism to mitigate consumer injury in the event that a lender's underwriting methodology does not meet the proposed parameters of § 1041.12. In developing proposed § 1041.12(d), the Bureau considered including substantially more complicated metrics and remedial provisions. The Bureau decided not to propose such provisions based on several concerns, including a concern that other remedial provisions would be less effective at mitigating an incentive for lenders to exploit the conditional exemption in § 1041.12 in ways not intended by the Bureau and a concern that these would be unduly burdensome for lenders and the Bureau alike to administer. The Bureau believes that the proposed refund requirement would be sufficient to prevent abuse under proposed § 1041.12.

The Bureau solicits comment on all aspects of proposed § 1041.12(d). In particular, the Bureau solicits comment on whether the requirement that lenders maintain and comply with policies and procedures for effectuating an underwriting method is sufficiently clear to provide lenders with guidance as to their obligations under § 1041.12(d); and, if not, what would be an alternative underwriting requirement for loans under § 1041.12. The Bureau also solicits comment on whether lenders that fail to achieve a portfolio default rate of not more than 5 percent should be required to refund the origination fee charged to all consumers with outstanding loans under § 1041.12 and whether any additional remedial measures should be required. Further, the Bureau solicits comment on whether lenders who exceed the targeted portfolio default rate should be prevented from making loans under § 1041.12 for a subsequent period; and, if so, what such a period would be and what would be the justification for such a prohibition.

12(d)(1)

Proposed § 1041.12(d)(1) would require lenders making loans under § 1041.12 to calculate the lender's portfolio default rate for such loans at least once every 12 months. The portfolio default rate for each period would cover all loans made under § 1041.12 that were outstanding at any time during the preceding year. The Bureau believes that requiring lenders to calculate portfolio default rates for loans under § 1041.12 on an annual basis would provide a ready means of determining whether loans that were made under proposed § 1041.12 were the type contemplated by this conditional exemption. Proposed comment 12(d)(1)-1 clarifies that lenders must use the method set forth in § 1041.12(e) to calculate the portfolio default rate.

The Bureau solicits comment on whether an annual calculation is sufficient to achieve the objectives of proposed § 1041.12; and, if not, what an alternative period would be for regular calculation of the portfolio default rate. Further, the Bureau solicits comment on the burdens that proposed § 1041.12(d)(1), if finalized, would impose on lenders, including small entities, making loans under the conditional exemption.

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[756] For example, the charge-off rates among ICBA members for loans that would be covered by the Bureau's proposals average between 0.54 and 1.02 percent. ICBA Letter October 6, 2015. Similarly, the American Bankers Association reports that 34 percent of their member banks that made "small dollar loans" charged-off no such loans in 2014 and that another 64 percent charged-off no more than 3 percent of such loans in the same year. ABA Letter December 1, 2015.

12(d)(2)

Proposed § 1041.12(d)(2) would require that lenders with a portfolio default rate exceeding 5 percent per year refund to each consumer with a loan included in the portfolio any origination fee excluded from the modified total cost of credit pursuant to proposed § 1041.12(b)(5). Lenders would be required to provide such refunds within 30 calendar days of identifying the excessive portfolio default rate; a lender would be deemed to have timely refunded the fee to a consumer if the lender delivers payment to the consumer or places payment in the mail to the consumer within 30 calendar days. Failure to provide the timely refund required by proposed § 1041.12(d)(2) would result in a violation of proposed § 1041 with respect to those loans. Proposed comment 12(d)(2)-1 clarifies that a lender may satisfy the refund requirement by, at the consumer's election, depositing the refund into the consumer's deposit account. Proposed comment 12(d)(2)-2 clarifies that a lender that failed in a prior 12-month period to achieve a portfolio default rate of not more than 5 percent would not be prevented from making loans under § 1041.12 for a subsequent 12-month period, provided that the lender provides a timely refund of origination fees pursuant to proposed § 1041.12(d)(2).

The Bureau is concerned that absent this refund requirement, the conditional exemption contained in proposed § 1041.12 could be subject to abuse as lenders could claim that their underwriting methods were calibrated to achieve a portfolio default rate of not more than 5 percent per year on loans under § 1041.12 without ever achieving that threshold. The refund requirement is designed to eliminate an incentive that might otherwise exist for a lender to invoke proposed § 1041.12 to make covered longer-term loans conditionally exempt from proposed §§ 1041.8, 1041.9, 1041.10, and 1041.15(b) but without actually underwriting the loans. The Bureau believes that such a back-end protection may be appropriate to ensure that the § 1041.12 exemption is available only where there is robust, lender-driven underwriting. The proposed timing components in § 1041.12(d)(2) are similar to the cure provisions in the Bureau's Regulation X, 12 CFR 1024.7(i). The Bureau believes that the timing requirements may be suitable for refunds provided in the context of proposed § 1041.12.

The Bureau solicits comment on whether a back-end consumer protection is appropriate for loans under § 1041.12; if so, whether the proposed refund requirement in § 1041.12(d)(2) would advance the consumer protection and access to credit objectives for proposed § 1041.12; and whether an alternative back-end requirement may be more appropriate. In particular, the Bureau solicits comment on whether an alternative requirement would better target the potential consumer injury from the lender's underwriting failure; for example, whether the Bureau should require lenders to cease all collections activities on delinquent or defaulted loans that are in a portfolio with a portfolio default rate exceeding 5 percent. Further, the Bureau seeks comment on whether other requirements would be necessary for the administration of the proposed refund requirement, including, for example, disgorgement of the amount of undelivered and uncashed refund checks. The Bureau also solicits comment on the proposed timing requirement, including whether 30 calendar days provides adequate time for lenders to process refund payments and whether it is appropriate to deem consumers to have timely received payment if the lender places payment in the mail by the required date. In addition, the Bureau solicits comment on the costs that proposed § 1041.12(d)(2), if finalized, would impose on lenders, including small entities, making loans under § 1041.12.

12(e) Calculation of Portfolio Default Rate

Proposed § 1041.12(e) would prescribe the required method for calculating the portfolio default rate for loans made under § 1041.12. Proposed comment 12(e)-1 clarifies that lenders must use the method of calculation in proposed § 1041.12(e) regardless of the lender's own accounting methods. The Bureau believes that a standardized calculation of portfolio default rate is appropriate to measure compliance with the conditions of § 1041.12 and also would minimize the burden of such calculation on lenders that make loans under § 1041.12. Loss ratios are typically calculated as a percentage of average outstanding balances for a period of time, and the proposed definition follows this convention; rather than requiring that lenders calculate average daily balance, as many lenders do, the Bureau's proposed definition uses a simpler methodology to calculate the average outstanding balance by permitting lenders to take a simple average of month-end balances at the end of each month in the 12-month period.

The Bureau solicits comment on all aspects of the proposed methodology for calculating portfolio default rate. In particular, the Bureau seeks comment on whether requiring lenders to include loans that were either charged-off or that were delinquent for a consecutive period of 120 days or more during the 12-month period would appropriately capture the portfolio default rate and what would be the justification for selecting some other threshold for portfolio loans. The Bureau also solicits comment on whether to include in the calculation of portfolio default rates loans under § 1041.12 that have been refinanced and, if so, how best to accomplish this calculation. The Bureau further solicits comment on whether to permit lenders the option of using either average daily balances or, as proposed, average month-end balances, in the calculation. Additionally, the Bureau seeks comment on the timing requirements of proposed § 1041.12(e), including the frequency with which portfolio default rate must be calculated and the amount of time permitted to calculate the portfolio default rate following the last day of the applicable period.

12(e)(1)

Proposed § 1041.12(e)(1) would define portfolio default rate as the sum of the unpaid dollar amount on loans made under § 1041.12 that were either charged-off during the 12 months of the calculation period or were delinquent for a consecutive period of 120 days or more during the 12-month period for which the rate is being calculated, divided by the average month-end outstanding balances for all loans made under § 1041.12 for each month of the 12-month period.

12(e)(1)(i)

Proposed § 1041.12(e)(1)(i) would define the lender's numerator for the calculation of portfolio default rate as the sum of dollar amounts owed on all covered longer-term loans made under § 1041.12 that meet the criteria in either § 1041.12(e)(1)(i)(A) or (B).

12(e)(1)(i)(A)

Proposed § 1041.12(e)(1)(i)(A) would include in the sum for § 1041.12(e)(1)(i) dollar amounts owed on loans that were delinquent for a period of 120 consecutive days or more during the 12-month period for which the portfolio default rate is being calculated.

Under the Federal Financial Institutions Examination Council's uniform charge-off policy, depository institutions are generally required to charge-off closed-end credit at 120 days of delinquency.[757] Non-depositories are under no similar obligation and their practices in charging off loans may vary. To achieve a uniform metric and a level playing field, the proposal would require that those loans that were delinquent for a consecutive 120 days or more be included in the calculation of the portfolio default rate, without regard to whether the loan was actually charged off by the lender.

12(e)(1)(i)(B)

Proposed § 1041.12(e)(1)(i)(B) would include in the sum for § 1041.12(e)(1)(i) dollar amounts owed on loans that the lender charged off during the 12-month period for which the portfolio default rate is being calculated, even if the loan was charged off by the lender before reaching the 120-day mark.

12(e)(1)(ii)

Proposed § 1041.12(e)(1)(ii) would define the lender's denominator for the portfolio default rate calculation as average of month-end outstanding balances owed on all covered longer-term loans made under § 1041.12 for each month of the 12-month period included in the calculation.

12(e)(2)

Proposed § 1041.12(e)(2) would require lenders to include in the calculation of the portfolio default rate all loans made under § 1041.12 that are outstanding at any point during the 12-month period for which the rate is calculated; proposed comment 12(e)(2)-1 clarifies that the relevant portfolio of loans includes loans originated by the lender for which assets are held off the lender's balance sheet, as well as on-balance sheet loans.

12(e)(3)

Proposed § 1041.12(e)(3) would specify that a loan is considered 120 days delinquent even if the loan is re-aged by the lender—*i.e.,* the lender has changed the delinquency status of the loan—prior to the 120th day, unless the consumer has made at least one full payment and the re-aging is for a period equivalent to the period for which the consumer made the payment.

12(e)(4)

Proposed § 1041.12(e)(4) would require lenders to make the portfolio default rate calculation within 90 days of the end of the 12-month period reflected in the portfolio. Proposed comment 12(e)(4)-1 clarifies the timing of the required calculation.

12(f) Additional requirements

Proposed § 1041.12(f) would impose additional requirements related to loans made under § 1041.12. The Bureau solicits comment on each of the requirements described below, including on the burden such requirements, if finalized, would impose on lenders, including small entities, making loans under § 1041.12. The Bureau also seeks comment on whether other or additional requirements would be appropriate for loans under § 1041.12 in order to fulfill the objectives of Title X of the Dodd-Frank Act, including the objectives related to consumer protection and access to credit.

12(f)(1)

Proposed § 1041.12(f)(1) would prohibit lenders from taking certain additional actions with regard to a loan made under § 1041.12. The Bureau solicits comment on whether the prohibitions are appropriate to advance the objectives of Title X of the Dodd-Frank Act and whether other actions should also be prohibited in connection with loans made under § 1041.12.

12(f)(1)(i)

Proposed § 1041.12(f)(1)(i) would prohibit lenders from imposing a prepayment penalty in connection with a loan made under § 1041.12. The Bureau is not proposing in this rulemaking to determine all instances in which prepayment penalties may raise consumer protection concerns. However, the Bureau believes that for loans qualifying for a conditional exemption under proposed § 1041.12, penalizing a consumer for prepaying a loan would be inconsistent with the consumer's expectation for the loan and may prevent consumers from repaying debt that they otherwise would be able to retire.

The Bureau also believes that this proposed restriction is consistent with the current practice of community banks and credit unions. From outreach to these lenders, the Bureau understands that lenders that make what would be covered longer-term loans as an accommodation often do so to help existing customers address a particular financial need and are interested in having their customers repay as soon as they are able. In light of these considerations, the Bureau believes that the proposed condition would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on the extent to which the requirement in proposed § 1041.12(f)(1)(i) is appropriate and on any alternative ways of defining the prohibited conduct that would provide adequate protection to consumers while encouraging access to credit.

12(f)(1)(ii)

Proposed § 1041.12(f)(1)(ii) would prohibit lenders that hold a consumer's finds on deposit from, in response to an actual or expected delinquency or default on the loan made under proposed § 1041.12, sweeping the account to a negative balance, exercising a right of set-off to collect on the loan, or closing the account. Proposed comment 12(f)(1)(ii)-1 clarifies that the prohibition in § 1041.12(f)(1)(ii) applies regardless of the type of account in which the consumer's funds are held and also clarifies that the prohibition does not apply to transactions in which the lender does not hold any funds on deposit for the consumer. Proposed comment 12(f)(1)(ii)-2 clarifies that the prohibition in § 1041.12(f)(1)(ii) does not affect the ability of the lender to pursue other generally-available legal remedies; the proposed clarification is similar to a provision in the Bureau's Regulation Z, 1026.12(d)(2).

Because loans under § 1041.12 would be exempt from the proposed ability-to-repay and payment notice requirements, the Bureau is concerned that in the event that a lender holds a consumer's funds on deposit and the loan turns out to be unaffordable to the consumer, the potential injury to a consumer could be exacerbated if the lender takes actions that cause the consumer's account to go to a negative balance or closes the consumer's account. Accordingly, the Bureau believes that the proposed prohibition would help ensure that, among other things, consumers are protected from unfair or abusive practices.

The Bureau solicits comment on whether the prohibition in proposed § 1041.12(f)(1)(ii) would be appropriate, and, alternatively, whether other restrictions related to treatment of a consumer's account by a lender that makes a loan under § 1041.12 to the consumer would be appropriate. The Bureau also solicits comment, in particular from banks and credit unions or other lenders that hold consumer funds, on current practices taken in response to actual or expected delinquency or default related to sweeping consumer accounts to negative, exercising a right of set-off to collect on a loan, and closing consumer accounts. The Bureau also solicits comment on whether the proposed condition would create safety and soundness concerns for depository institutions. Additionally, the Bureau solicits comment on whether the same or similar condition would be appropriate for transactions in which a lender does not hold a consumer's funds on deposit.

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[757] 64 FR 6655, 6658 (Feb. 10, 1999).

12(f)(2)

Proposed § 1041.12(f)(2) would require lenders to furnish information concerning a loan made under § 1041.12 either to each information system described in § 1041.16(b) or to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Lenders could select which type of furnishing to do.

During the SBREFA process and in outreach with industry and others, the Bureau received feedback about requiring lenders that would make covered longer-term loans under a conditional exemption to the ability-to-repay requirements to obtain a consumer report from and furnish loan information to a specialty consumer reporting agency as a condition of making such loans. Lenders noted that the then-contemplated furnishing obligations would be a substantial burden and pose a barrier to making relatively lower-cost loans. From outreach with community banks and credit unions, the Bureau understands that many financial institutions with accommodation lending programs currently furnish loan information to a nationwide consumer reporting agency. However, the Bureau understands that these institutions generally do not furnish information concerning the loan to or obtain consumer reports from specialty consumer reporting agencies.

As proposed in § 1041.12(f)(2), lenders would not be required to furnish information about loans made under § 1041.12 to information systems described in proposed § 1041.16(b) if the lender instead furnishes information about that loan to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The Bureau believes that this furnishing requirement strikes the appropriate balance between minimizing burden on lenders that would make loans under § 1041.12 and establishing a reasonably comprehensive record of a consumer's borrowing history with respect to these loans, which would be useful for the other provisions of the Bureau's proposed rule that require assessing the amount and timing of a consumer's debt payments. In light of these considerations, the Bureau believes that the proposed requirement would help ensure that, among other things, this market operates efficiently to facilitate access to credit.

The Bureau solicits comment on the proposed furnishing requirement in § 1041.12(f)(2) and on the costs that the proposed requirement would impose, if finalized, on lenders, including small entities. In particular, the Bureau solicits comment on whether to require lenders to furnish in the manner set forth in proposed § 1041.12(f)(2) or whether to relieve lenders from a requirement to furnish information concerning loans made under § 1041.12. In addition, the Bureau solicits comment on whether to require lenders to furnish to multiple consumer reporting agencies that compile and maintain files on consumers on a nationwide basis rather than only one. The Bureau also solicits comment on the extent to which lenders that currently make loans similar to those that would be permitted under proposed § 1041.12 currently furnish information to nationwide consumer reporting agencies or to specialty consumer reporting agencies.

12(f)(2)(i)

Proposed § 1041.12(f)(2)(i) would permit lenders to satisfy the requirement in § 1041.12(f)(2) by furnishing information concerning a loan made under § 1041.12 to each information system described in § 1041.16(b). Lenders furnishing in the manner provided for in proposed § 1041.12(f)(2)(i) would be required to furnish the loan information described in proposed § 1041.16(c).

12(f)(2)(ii)

Proposed § 1041.12(f)(2)(ii) would permit lenders to satisfy the requirement in § 1041.12(f)(2) by furnishing information concerning a loan made under § 1041.12 at the time of the lender's next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation, whichever is earlier. Proposed § 1041.12(f)(2)(ii) would further provide that "consumer reporting agency that compiles and maintains files on a consumers on a nationwide basis" has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Subpart D—Payment Practices

In proposed § 1041.13, the Bureau proposes to identify it as an unfair and abusive act or practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. To avoid committing this unfair and abusive practice, a lender would have to cease attempting to withdraw payments from the consumer's account or obtain a new and specific authorization to make further withdrawals.

Proposed § 1041.14 would prevent the unlawful practice by prohibiting further payment withdrawal attempts after two unsuccessful attempts in succession, except when the lender has obtained a new and specific authorization for further withdrawals. Proposed § 1041.14 also includes requirements for determining when the prohibition on further payment withdrawal attempts has been triggered and for obtaining a consumer's new and specific authorization to make additional withdrawals from the consumer's account.

Proposed § 1041.15 would provide a complementary set of interventions to require lenders to provide a notice to a consumer prior to initiating a payment withdrawal from the consumer's account. Proposed § 1041.15 also would require lenders to provide a alerting consumers to the fact that two consecutive payment withdrawal attempts to their accounts have failed—thus triggering operation of the requirements in proposed § 1041.14(b)—so that consumers can better understand their repayment options and obligations in light of their accounts' severely distressed condition. The two payments-related sections thus complement and reinforce each other.

The predicate for the proposed identification of an unfair and abusive act or practice in proposed § 1041.13—and thus for the prevention requirements contained in proposed § 1041.14—is a set of preliminary findings with respect to certain payment practices for covered loans and the impact on consumers of those practices. Those preliminary findings are set forth below in Market Concerns—Payments. After laying out these preliminary findings, the Bureau sets forth its reasons for proposing to identify as unfair and abusive the practice described in proposed § 1041.13. The Bureau seeks comment on all aspects of this subpart, including the intersection of the proposed interventions with existing State, tribal, and local laws and whether additional or alternative protections should be considered to address the core harms discussed below.

Market Concerns—Payments

At the time of loan origination, it is a common practice among many lenders to obtain authorization to initiate payment withdrawal attempts from the consumer's transaction account. Such authorization provides lenders with the ability to initiate withdrawals without further action from the consumer, including authorization for payment methods like paper checks, ACH transfers, and debit and prepaid cards. Like other industries that commonly use such authorizations for future withdrawals, consumers and lenders have found that they can be a substantial convenience for both parties. However, they also expose the consumer to a range of potential harms if the authorizations are not executed as expected. Indeed, Congress has recognized that such authorizations can give lenders a special kind of leverage over borrowers, for instance by prohibiting in the Electronic Fund Transfer Act the conditioning of credit on the consumer granting authorizations for a series of recurring electronic transfers over time.[758]

This section reviews the available evidence on the outcomes that consumers experience when payday and payday installment lenders obtain and use the ability to initiate withdrawals from consumers' accounts. As detailed below, the Bureau is concerned that despite various regulatory requirements, lenders in this market are using their ability to initiate payment withdrawals in ways that harm consumers. Moreover, the Bureau is concerned that, in practice, consumers have little ability to protect themselves from these practices, and that private network attempts to restrict these behaviors are limited in various ways.

The Bureau's research with respect to payments practices has focused on online payday and payday installment loans. The Bureau has done so because, with an online loan, payment attempts generally occur through the ACH network and thus can be readily tracked at the account and lender level by using descriptive information in the ACH file. Other publicly available data indicate that returned payments likewise occur with great frequency in the storefront payday market; indeed, a comparison of this data with the Bureau's findings suggests that the risks to consumers with respect to failed payments may be as significant or even greater in the storefront market than in the online market.

In brief, the Bureau preliminarily finds:

- Lenders in these markets often take broad, ambiguous payment authorizations from consumers and vary how they use these authorizations, thereby increasing the risk that consumers will be surprised by the amount, timing, or channel of a particular payment and will be charged overdraft or non-sufficient funds fees as a result.
- When a particular withdrawal attempt fails, lenders in these markets often make repeated attempts at re-presentment, thereby further exacerbating the fees imposed on consumers.
- These cumulative practices contribute to return rates that vastly exceed those in other markets, substantially increasing consumers' costs of borrowing, their overall financial difficulties, and the risk that they will lose their accounts.
- Consumers have little practicable ability to protect themselves from these practices.
- Private network protections necessarily have limited reach and impact, and are subject to change.

1. Variation in Timing, Frequency, and Amount of Payments

As discussed above in part II D, obtaining authorization to initiate withdrawals from consumers' transaction accounts is a standard practice among payday and payday installment lenders. Lenders often control the parameters of how these authorizations are used. Storefront payday lenders typically obtain a post-dated paper check signed by the consumer, which can in fact be deposited before the date listed and can be converted into an ACH withdrawal. Online lenders typically obtain bank account information and authorizations to initiate ACH withdrawals from the consumer's account as part of the consumers' agreement to receive the funds electronically.[759] Many lenders obtain authorization for multiple payment methods, such as taking a post-dated check along with the consumer's ACH authorization or debit card information. Banks and credit unions often have additional payment channel options, for instance by using internal transfers from a consumer's deposit account to collect loan payments.

Once lenders have obtained the authorizations, there is significant evidence that payday and payday installment lenders frequently execute the withdrawals in ways that consumers do not expect. In some cases these actions may violate authorizations, contract documents, Federal and State laws, and/or private network rules, and in other cases they may exploit the flexibility provided by these sources, particularly when the underlying contract materials and authorizations are broadly or vaguely phrased. The unpredictability for consumers is often exacerbated by the fact that lenders often also obtain authorizations to withdraw varying amounts up to the full loan amount, in an apparent attempt to bypass EFTA notification requirements that would otherwise require notification of transfers of varying amount.[760]

These various practices increase the risk that the payment attempt will be made in a way that triggers fees on a consumer's account. As discussed in part II D., unsuccessful payment attempts typically trigger bank fees. According to deposit account agreements, banks charge a non-sufficient funds fee of approximately $34 for returned ACH and check payments.[761] Some prepaid card providers charge fees for returned or declined payments.[762] Even if the payment goes through, the payment may exceed the funds available in the consumer's account, thereby triggering an overdraft fee of approximately $34, and in some cases "extended" overdraft fees, ranging from $5 to $38.50 if the consumer is unable to clear the overdraft within a specified period of time.[763] These failed payment fees charged to the consumer's deposit account may be exacerbated by returned payment and late fees charged by lenders, since many lenders also charge a returned-item fee for any returned check, returned electronic payment, or other returned payment device.[764] The Bureau is aware of some depository institutions that have charged overdraft and NSF fees for payments made within the institutions' internal systems, including a depository institution that charged overdraft and NSF fees on payments related to its small dollar loan product.[765]

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[758] Electronic Fund Transfer Act, 15 U.S.C. 1693k(1); Regulation E, 12 CFR 1005.10(e).

[759] Although, as noted above, the EFTA and Regulation E prohibit lenders from conditioning credit on a consumer "preauthorizing" recurring electronic fund transfers, in practice online payday and payday installment lenders are able to obtain such authorizations from consumers for almost all loans through various methods. Lenders are able to convince many consumers that advance authorizations will be more convenient, and some use direct incentives such as by making alternative methods of payment more burdensome, changing APRs, or providing slower means of access to loan proceeds for loans without preauthorized withdrawals. The Bureau is not addressing in this rulemaking the question of whether any of the practices described are consistent with the EFTA and Regulation E.

[760] *See* part II D. for a more detailed discussion of the flexibility provided under laws and private network rules and other lender practices with regard to obtaining initial authorizations.

[761] *CFPB Study of Overdraft Programs White Paper,* at 52.

[762] There does not appear to be a standard charge for returned and declined payments by prepaid card providers, although the fees currently appear to be lower than those on depository accounts. The Bureau has observed fees ranging from 45 cents to $5.

[763] *CFPB Study of Overdraft Programs White Paper.* Some extended overdraft fees are charged repeatedly if the overdraft is not cleared.

Despite these potential risks to consumers, many lenders vary the timing, frequency, and amount of presentments over the course of the lending relationship. For example, the Bureau has received a number of consumer complaints about lenders initiating payments before the due date, sometimes causing the borrower's accounts to incur NSF or overdraft fees. Lenders also appear to use account access to collect fees in addition to regular loan payments. The Bureau has received consumer complaints about bank fees triggered when lenders initiated payments for more than the scheduled payment amount. The Bureau is also aware of payday and payday installment lender policies to vary the days on which a payment is initiated based on prior payment history, payment method, and predictive products provided by third parties. Bureau analysis of online loan payments shows differences in how lenders space out payment attempts and vary the amounts of such attempts in situations when a payment attempt has previously failed.[766]

Same-Day Attempts

Some lenders make multiple attempts to collect payment on the same day or over a period of time, contributing to the unpredictable nature of how payment attempts will be made and further exacerbating fees on consumer accounts. For example, the Bureau has observed storefront[767] and online payday and payday installment lenders that, as a matter of course, break payment attempts down into multiple attempts on the same day after an initial attempt fails. This practice has the effect of increasing the number of NSF or overdraft fees for consumers because, in most cases when the account lacks sufficient funds to pay the balance due, all attempts will trigger NSF or overdraft fees. In the Bureau's analysis of online ACH payments, approximately 35 percent[768] of the payments were attempted on the same day as another payment attempt. This includes situations in which a lender breaks down a payment into three attempts in 1 day (4 percent of payments observed) and four or more attempts in 1 day (2 percent of payments observed). The most extreme practice the Bureau has observed was a lender who attempted to collect payment from a single account 11 times in one day. The Bureau also has received consumer complaints about lenders making multiple attempts to collect in one day, including an instance of a lender making nine payment attempts in a single day.

When multiple payment requests are submitted to a single account on the same day by a payday lender, the payment attempts usually all succeed (76 percent) or all fail (21 percent), leaving only 3 percent of cases where one but not all attempts succeed.[769] In other words, multiple presentments are seven times more likely to result in multiple NSF events for the consumer than to result in a partial collection by the lender.

Re-Presentment

Moreover, when a lender's presentment or multiple presentments on a single day fail, lenders typically attempt to collect payment again multiple times on subsequent days.[770] According to CFPB analysis of online ACH payments, 75 percent of ACH payments presented by online payday lenders that initially fail are re-presented by the lender.[771] After a second failed attempt, 66 percent of failed payments are re-presented, and 50 percent are re-presented after three failures. Consumers have complained to the Bureau that lenders attempt to make several debits on their accounts within a short period of time, including one consumer who had taken out multiple loans from several online payday lenders and reported that the consumer's bank account was subject to 59 payment attempts over a 2 month period.[772]

Lenders appear more likely to deviate from the payment schedule after there has been a failed payment attempt. According to Bureau analysis, 60 percent of payment attempts following a failed payment came within 1-7 days of the initial failed attempt, compared with only 3 percent of payment attempts following a successful payment.[773] The Bureau observed a lender that, after a returned payment, made a payment presentment every week for several weeks. Some lenders present again after 30 or 90 days.

In addition to deviations from the payment schedule, some lenders adopt other divergent practices to collect post-failure payments. For example, the Bureau found that after an initial failure, one storefront payday and payday installment lender had a practice of breaking an ACH payment into three smaller pieces on the consumer's next payday: one for 50 percent of the amount due, one for 30 percent of the amount due, and one for 20 percent of the amount due.[774] Approximately 80 percent of these smaller attempts resulted in all three presentments being returned for non-sufficient funds.

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[764] *See, e.g.*, ACE Cash Express, *Loan Fee Schedule—Texas, available at https://www.acecashexpress.com/~/media/Files/Products/Payday/Internet/Rates/TX_FeeSchedule.pdf* (last visited May 18, 2016) (charging $30 "for any returned check, electronic payment, or other payment device"); Cash America, *Rates and Fees—Texas, available at http://www.cashamerica.com/LoanOptions/CashAdvances/RatesandFees/Texas.aspx* (last visited May 18, 2016) ("A $30 NSF charge will be applied for any returned payment."); Advance America 2011 Annual Report (Form 10-K), at 8 ("Fees for returned checks or electronic debits that are declined for non-sufficient funds ('NSF') vary by State and range up to $30, and late fees vary by State and range up to $50. For each of the years ended December 31, 2011 and 2010, total NSF fees collected were approximately $2.9 million and total late fees collected were approximately $1 million and $0.9 million, respectively."); Mypaydayloan.com, *FAQs, https://www.mypaydayloan.com/faq#loancost* (last visited May 17, 2016) ("If your payment is returned due to NSF (or Account Frozen or Account Closed), our collections department will contact you to arrange a second attempt to debit the payment. A return item fee of $25 and a late fee of $50 will also be collected with the next debit."); Great Plains Finance, *Installment Loan Rates, https://www.cashadvancenow.com/rates.aspx*) (last visited May 16, 2016) (explaining returned payment fee of $25 and, for payments more than 15 days late, a $30 late fee.

[765] *See, e.g.*, CFPB Consent Order, Regions Bank, CFPB No. 2015-CFPB-0009 (Apr. 28, 2015), *available at http://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf* (finding that Regions charged overdraft and non-sufficient funds fees with its deposit advance product, despite stating that it would not do so after a change in policy. Specifically, if the bank collected payment from the consumer's checking account and the payment was higher than the amount available in the account, it would cause the consumer's balance to drop below zero. When that happened, the bank would either cover the transaction and charge an overdraft fee or reject its own transaction and charge a non-sufficient funds fee.), *available at http://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf.*

[766] *CFPB Online Payday Loan Payments*, at 16-17 figs.2-3.

[767] *See* CFPB Consent Order, *EZCORP*, CFPB No. 2015-CFPB-0031 (Dec. 16, 2015), *available at http://files.consumerfinance.gov/f/201512_cfpb_ezcorp-inc-consent-order.pdf.*

[768] *CFPB Online Payday Loan Payments*, at 20 tbl.3.

[769] *Id.* at 21 tbl.4.

[770] *See, e.g.*, First Cash Fin. Servs., 2014 Annual Report (Form 10-K), at 5 (Feb. 12, 2015), *available at https://www.sec.gov/Archives/edgar/data/840489/000084048915000012/fcfs1231201410-k.htm* (explaining that provider of online and storefront loans subsequently collects a large percentage of returned ACH and check payments by redepositing the customers' checks, ACH collections, or receiving subsequent cash repayments by the customers); CashNet USA, *FAQs, https://www.cashnetusa.com/faq.html* (last visited Dec. 18, 2015) ("If the payment is returned for reason of insufficient funds, the lender can and will re-present the ACH Authorization to your bank").

[771] *CFPB Online Payday Loan Payments*, at 14. In the CFPB analysis, any payment attempt following a failed payment attempt is considered a "re-presentment." Failed requests submitted on the same day are analyzed separately from re-presentments submitted over multiple days.

[772] This consumer reported that their bank account was ultimately closed with charges of $1,390 in bank fees.

[773] *CFPB Online Payday Loan Payments*, at 16.

2. Cumulative Impacts

These practices among payday and payday installment lenders have substantial cumulative impacts on consumers. Industry analyses, outreach, and Bureau research suggest that the industry is an extreme outlier with regard to the rate of returned items. As a result of payment practices in these industries, consumers suffer significant non-sufficient funds, overdraft, and lender fees that substantially increase financial distress and the cumulative costs of their loans.

Outlier Return Rates

Financial institution analysis and Bureau outreach indicate that the payday and payday installment industry is an extreme outlier with regard to the high rate of returned items generated. These returns are most often for non-sufficient funds, but also include transactions that consumers have stopped payment on or reported as unauthorized. The high rate of returned payment attempts suggests problems in the underlying practices to obtain consumer authorization [775] and that the industry is causing a disproportionate amount of harm relative to other markets.

A major financial institution has released analysis of its consumer depository account data to estimate ACH return rates for payday lenders, including both storefront and online companies.[776] In a 2014 analysis of its consumer account data, the institution found that industry lenders had an overall return rate of 25 percent for ACH payments.[777] The institution observed individual lender return rates ranging from 5 percent to almost 50 percent. In contrast, the average return rate for debit transactions in the ACH network across all industries was just 1.36 percent. Among individual industries, the industry with the next highest return rate was cable television at 2.9 percent, then mobile telephones at 1.7 percent, insurance at 1.2 percent, auto and mortgage at 0.8 percent, utilities at 0.4 percent, and credit cards at 0.4 percent.[778]

In addition to this combined financial institution analysis, Bureau research and outreach suggest extremely high rates of returned payments for both storefront and online lenders. Storefront lenders, for example, report failure rates of approximately 60 to 80 percent when they deposit consumers' post-dated checks or initiate ACH transfers from consumers' accounts in situations in which the consumer has not come into the store to repay in cash.[779] Bureau research of ACH payments finds that online lenders experience failure rates upwards of 70 percent where they attempt to re-present an ACH withdrawal one or more times after an initial failure.[780] Moreover, of the 30 percent of second attempts and 27 percent of third attempts that "succeed," Bureau research indicates that approximately a third do so only by overdrafting the consumer's account.[781]

Account Fees

Bureau analysis, consumer complaints, and public litigation documents show that the damage from these payment attempts can be substantial.[782] Fifty percent of online borrowers in the Bureau's analysis of online payday and payday installment loans incurred at least one overdraft or non-sufficient funds return in connection with their loans, with average fees for these consumers at

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[774] CFPB Consent Order, *EZCORP*.

[775] High return rates for non-sufficient funds may also be indicative of lenders' problematic authorization practices. In developing its rules to monitor overall ACH return rates, NACHA explained:

> Moreover, while some level of Returns, including for funding-related issues such as insufficient funds or frozen accounts, may be unavoidable, excessive total Returns also can be indicative of problematic origination practices. For example, although some industries have higher average return rates because they deal with consumers with marginal financial capacity, even within such industries there are outlier Originators whose confusing authorizations result in high levels of Returns for insufficient funds because the Receiver did not even understand that s/he was authorizing an ACH transaction. Although such an Entry may be better characterized as "unauthorized," as a practical matter it may be returned for insufficient funds before a determination regarding authorization can be made.

NACHA, *Request for Comment and Request for Information—ACH Network Risk and Enforcement Topics, Rule Proposal Description*, at 3 (Nov. 11, 2013), *available at https://www.shazam.net/pdf/ach_networkRisk_propRulesDesc_1113.pdf* (last visited May 17, 2016). *See also* Federal Financial Institutions Examinations Council ("FFIEC"), Bank Secrecy Act/Anti-Money Laundering Exam Manual, at 237 (2014), *available at https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf* ("High levels of RCCs and/or ACH debits returned for insufficient funds or as unauthorized can be an indication of fraud or suspicious activity. Therefore, return rate monitoring should not be limited to only unauthorized transactions, but include returns for other reasons that may warrant further review, such as unusually high rates of return for insufficient funds or other administrative reasons."); FDIC, Financial Institution Letter FIL-3-2012, *Payment Processor Relationships*, at 5 (rev'd July 2014), *available at https://www.fdic.gov/news/news/financial/2012/fil12003.pdf* ("Financial institutions that initiate transactions for payment processors should implement systems to monitor for higher rates of returns or charge backs and/or high levels of RCCs or ACH debits returned as unauthorized or due to insufficient funds, all of which often indicate fraudulent activity.").

[776] JP Morgan is one of the largest banks in the country, with $2.4 trillion in assets and an average of $200 billion in consumer checking accounts. *See* JP Morgan Chase, *About Us, https://www.jpmorganchase.com/corporate/About-JPMC/about-us.htm* (last visited Mar. 17, 2015); JP Morgan Chase & Co., *Annual Report 2014* (2015), *available at http://files.shareholder.com/downloads/ONE/1717726663x0x820066/f831cad9-f0d8-4efc-9b68-f18ea184a1e8/JPMC-2014-AnnualReport.pdf.*

[777] *Monitoring for Abusive ACH Debit Practices*, Presentation by Beth Anne Hastings of JP Morgan Chase at Spring 2014 NACHA Conference in Orlando, FL (Apr. 7, 2014). This RDFI analysis included returns due to non-sufficient funds, stop payment orders, and unauthorized activity; administrative returns were not included. However, most of these returns were triggered by non-sufficient funds; lenders generally had an unauthorized return rate below 1 percent. *See also* First Cash Fin. Servs., 2014 Annual Report (Form 10-K), at 5 ("Banks return a significant number of ACH transactions and customer checks deposited into the Independent Lender's account due to insufficient funds in the customers' accounts.") (discussion later in the document indicates that the CSO section covers both online and storefront loans).

[778] NACHA Q4 2014.

[779] QC Holdings 2014 Annual Report (Form 10-K), at 7 (reporting a return rate of 78.5 percent); Advance America 2011 Annual Report (Form 10-K), at 27 (reporting return rates of 63 percent for checks and 64 percent for ACH attempts).

[780] Bureau analysis of ACH payments by online lenders shows an initial ACH payment failure rate due to NSFs of 6 percent. However, among the "successful" payments, Bureau research indicates that approximately 6 percent are paid only by overdrafting the consumer's account. CFPB Report: Online Payday Loan Payments, Table 1, at 13. The Bureau's analysis includes payday lenders and payday installment lenders that only operate online; the dataset excludes lenders that provide any storefront loans. In comparison, the Chase dataset includes both storefront and online payday lenders. As discussed in part II D., many payments to storefront lenders are provided in person in the store. The fact that the consumer has not shown up in the store is a sign that the consumer may be having difficulty making the payment. In contrast, online lenders generally collect all payments electronically, and have more success on the initial payment attempt. Given that storefront lenders have higher rates of return on the first payment attempt, this sample difference may explain the relatively lower failure rate for first-attempt online ACH payments observed by the Bureau.

[781] *CFPB Online Payday Loan Payments*, at 13, tbl. 1.

[782] *See, e.g.*, Complaint at 19, *Baptiste* v. *JP Morgan Chase Bank*, No. 1:12-CV-04889 (E.D.N.Y. Oct. 1, 2012) (alleging that during a two-month period, 6 payday lenders debited the plaintiff's bank account 55 times, triggering a total of approximately $1523 in non-sufficient funds, overdraft, and service fees).

$185.[783] Indeed, 10 percent of accounts experienced at least 10 payment withdrawal attempts that result in an overdraft or non-sufficient funds return over an 18 month period.[784] A small but significant percentage of consumers suffer extreme incidences of overdraft and non-sufficient funds fees on their accounts; for consumers with at least one online payday attempt that resulted in an overdraft or non-sufficient funds return, 10 percent were charged at least $432 in related account fees over the 18 month sample period.[785]

Account Closure

Lender attempts to collect payments from an account may also contribute to account closure. The Bureau has observed that accounts of borrowers who use loans from online payday lenders are more likely to be closed than accounts generally (17 percent versus 3 percent, respectively).[786] In particular, 36 percent of borrowers had their account closed involuntarily following an unsuccessful attempt by an online payday lender to collect a payment from the account, a rate four times greater than the closure rate for accounts with online loans that only had NSFs from non-payday transactions. For accounts with failed online payday loan transactions, account closures typically occur within 90 days of the last observed online payday loan transaction; in fact, 74 percent of account closures in these situations occur within 90 days of the first non-sufficient funds return triggered by an online payday or payday installment lender.[787] This suggests that the online loan played a role in the closure of the account, or that payment attempts failed because the account was already headed towards closure, or both.[788]

3. Limited Consumer Control

Consumers' ability to protect their accounts from these types of presentment problems is limited due to a combination of factors, including the nature of the lender practices themselves, lender revocation procedures (or lack thereof), costs imposed by consumers' depository institutions in connection with attempting to stop presentment attempts, and operational limits of individual payment methods. In some cases, revocation and stopping payment may be infeasible, and at a minimum they are generally both difficult and costly.

Consumers Have Difficulty Stopping Lenders' Ability to Access Their Accounts

The Bureau believes that lenders and account-holding institutions may make it difficult for consumers to revoke account access or stop withdrawals.[789] One way consumers could attempt to stop multiple attempts to collect from their accounts would be to direct their lender to stop initiating payments. To do so, however, the consumer must be able to identify and contact the lender—which can be difficult or impossible for consumers who have borrowed from an online lender. Moreover, lenders who can be contacted often make it difficult to revoke access. For example, several lenders require consumers to provide another form of account access in order to effectively revoke authorization with respect to a specific payment method—some lenders require consumers to provide this back-up payment method as part of the origination agreement.[790] Some lenders require consumers to mail a written revocation several days before the effective date of revocation.[791] These same lenders automatically debit payments through another method, such as remotely created check, if a consumer revokes the ACH authorization. Others explicitly do not allow revocation, even though ACH private network rules require stop payment rights for both one-time and recurring ACH transactions.[792] For example, one lender Web site states that ACH revocation is not allowed for its single-payment online loans.[793] Other lenders may never have obtained proper authorization in the first place[794] or take broad authorizations to debit any account associated with the consumer.[795]

Consumer complaints sent to the Bureau also indicate that consumers struggle with anticipating and stopping payment attempts by payday lenders. Complaints where the consumer has identified the issues "can't stop lender from charging my bank account" or "lender charged my bank account on wrong day or for wrong amount" account for roughly 9 percent of the more than 12,200 payday loan complaints the Bureau has handled since November 2013.[796] Although the

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[783] *CFPB Online Payday Loan Payments*, at 10-11.

[784] *Id.* at 10.

[785] *Id.* at 12.

[786] *Id.* at 24 tbl.5.

[787] *Id.* at 23.

[788] *See also* Complaint at 14, *Baptiste*, No. 1:12-CV-04889 (alleging plaintiff's bank account was closed with a negative balance of $641.95, which consisted entirely of bank's fees triggered by the payday lenders' payment attempts); *id.* at 20-21 (alleging plaintiff's bank account was closed with a negative balance of $1,784.50, which consisted entirely of banks fees triggered by the payday lender's payment attempts and payments provided to the lenders through overdraft, and that plaintiff was subsequently turned down from opening a new checking account at another bank because of a negative ChexSystems report stemming from the account closure).

[789] The Bureau is not addressing in this rulemaking the question of whether any of the practices described are consistent with the EFTA and Regulation E.

[790] *See, e.g.*, Castle Payday Loan Agreement, Ex. A, *Parm* v. *BMO Harris Bank*, N.A., No. 13-03326 (N.D. Ga. Dec. 23, 2013), ECF No. 60-1 ("You may revoke this authorization by contacting us in writing at *ach@castlepayday.com* or by phone at 1-888-945-2727. You must contact us at least three (3) business days prior to when you wish the authorization to terminate. If you revoke your authorization, you authorize us to make your payments by remotely-created checks as set forth below.").

[791] *See id.*

[792] *See* NACHA Rule 3.7.1.2, RDFI Obligation to Stop Payment of Single Entries ("An RDFI must honor a stop payment order provided by a Receiver, either verbally or in writing, to the RDFI at such time and in such manner as to allow the RDFI a reasonable opportunity to act upon the order prior to acting on an ARC, BOC, POP, or RCK Entry, or a Single Entry IAT, PPD, TEL, or WEB Entry to a Consumer Account.").

[793] Advance America provides the following frequently asked question in regard to its online loan product:

Can I revoke my ACH payment?

No. The ACH Authorization can only be revoked AFTER we have received payment in full of the amount owed. Because our advances are single payment advances (that is, we advance a sum of money that is to be repaid in a lump sum), we are permitted to require ACH repayment in accordance with the Federal Electronic Funds Transfer Act ("EFTA").

See Advance America, *Frequently Asked Questions, https://www.onlineapplyadvance.com/faq* (last visited May 17, 2016).

[794] Hydra Group, a purported online payday lender against which the Bureau brought an enforcement action, allegedly used information bought from online lead generators to access consumers' checking accounts to illegally deposit payday loans and withdraw fees without consent. The Bureau alleged that Hydra Group falsified loan documents to claim that the consumers had agreed to the phony online payday loans. The scam allegedly added up to more than $100 million worth of consumer harm. Hydra had been running its transactions through the ACH system. Complaint, *CFPB* v. *Moseley*, No. 4:14-CV-00789 (W.D. Mo. Sept. 8, 2014), ECF No. 3, *available at http://files.consumerfinance.gov/f/201409_cfpb_complaint_hydra-group.pdf. See also* Stipulated Order, *FTC* v. *Michael Bruce Moneymaker*, Civil Action No. 2:11-CV-00461 (D. Nev. Jan. 24, 2012), *available at https://www.ftc.gov/sites/default/files/documents/cases/2012/02/120201moneymakerorder.pdf* (purported lead generator defendants used information from consumer payday loan applications to create RCCs to charge consumer accounts without authorization).

[795] *See, e.g.*, Great Plains Lending d/b/a Cash Advance Now, *Frequently Asked Questions (FAQs), https://www.cashadvancenow.com/FAQ.aspx* (last visited May 16, 2016) ("If we extend credit to a consumer, we will consider the bank account information provided by the consumer as eligible for us to process payments against. In addition, as part of our information collection process, we may detect additional bank accounts under the ownership of the consumer. We will consider these additional accounts to be part of the application process.").

[796] Another seven percent of consumers selected "payment to account not credited."

Bureau does not specifically collect information from consumers on the frequency of these issues in the nearly 24,000 debt-collection complaints related to payday loans or in the more than 9,700 installment loan complaints the Bureau has also handled, review of those complaints and complaints submitted by consumers about deposit accounts suggest that many consumers who labeled their complaints as falling under those categories also experience difficulties anticipating and stopping payment attempts by payday and payday installment lenders.

The other option for consumers is to direct their bank to stop payment, but this too can be challenging. Depository institutions typically charge a fee of approximately $32 for processing a stop payment order, making this a costly option for consumers.[797] In addition, some lenders charge returned-item fees if the stop payment order successfully blocks an attempt.[798] The Bureau has received complaints from consumers charged overdraft and NSF fees after merchants with outstanding stop payment orders were able to withdraw funds despite the presence of the orders; in some instances, banks refuse to refund these charges.

The odds of successfully stopping a payment also vary by channel. To execute a stop payment order on a check, banks usually use the check number provided by the consumer. Since ACH payments do not have a number equivalent to a check number for the bank to identify them, ACH payments are particularly difficult to stop. To block the payment, banks may need to search the ACH transaction description for information that identifies the lender. Determining an effective search term is difficult given that there is no standardization of how originators of a payment—in this case, lenders—identify themselves in the ACH network. Lenders may use a parent company name, abbreviated name, or vary names based on factors like branch location. Some lenders use the name of their third party payment processor. Bank systems with limited searching capabilities may have difficulty finding these transactions and executing an ACH stop payment order.

Moreover, remotely created checks and remotely created payment orders are virtually impossible to stop because the consumer does not know the check number that the payee will generate, and the transaction information does not allow for payment identification in the same way that an ACH file does. RCCs and RCPOs have check numbers that are created by the lender or its payment processor, making it unlikely that consumers would have this information.[799] Industry stakeholders, including members of the Bureau's Credit Union Advisory Council, indicate that it is virtually impossible to stop payments on RCCs and RCPOs because information to stop the payment—such as check number and payment amount—are generated by the lender or its payment processor. Moreover, consumers may not realize that a payment will be processed as a RCC, so they may not know to ask their bank to look for a payment processed as a check rather than as an ACH payment.

Some financial institutions impose additional procedural hurdles, for instance by requiring consumers to provide an exact payment amount for a stop payment order and allowing payments that vary by a small amount to go through.[800] Others require consumers to provide the merchant identification code that the lender used in the ACH file.[801] Because there is no standardization of merchant names or centralized database of merchant identification codes in the ACH system, however, the only way for consumers to know the exact merchant identification code is if they observed a previous debit by that lender. Even if a consumer located a lender's identification code on a previous debit, lenders may vary this code when they are debiting the same consumer account.[802] During the Bureau's outreach, some depository institutions indicated that some payday lenders use multiple merchant ID codes and different names on their ACH transactions in an apparent attempt to reduce the risk of triggering scrutiny for their ACH presentments. Moreover, banks may require consumers to navigate fairly complex procedures in order to stop a payment, and these procedures may vary depending on whether the payment is presented through the ACH system or the check system. For example, one major depository institution allows consumers to use its online system to stop payment on a check, but requires notification over the phone to issue a stop payment on an ACH item.[803]

The Bureau believes that there is also some risk that bank staff may misinform consumers about their rights. During outreach, the Bureau has learned that some bank ACH operations staff do not believe consumers have any right to stop payment or send back unauthorized transactions initiated by payday lenders. The Bureau has received consumer complaints to the same effect.[804] Recent Federal court cases and information from legal aid organizations[805] also provide evidence that bank staff may not correctly implement consumer payment rights in all cases.[806]

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[797] Median stop payment fee for an individual stop payment order charged by the 50 largest financial institutions in 2015. Informa Research Services, Inc. (Aug. 7, 2015), Calabasas, CA. *www.informars.com*. Although information has been obtained from the various financial institutions, the accuracy cannot be guaranteed.

[798] *See, e.g.,* Complaint at 19, *Baptiste* v. *JP Morgan Chase Bank,* No. 1:12-CV-04889 (E.D.N.Y. Oct. 1, 2012) (alleging that during a two-month period, 6 payday lenders debited the plaintiff's bank account 55 times, triggering a total of approximately $1523 in non-sufficient funds, overdraft, and service fees); *CFPB Online Payday Loan Payments.*

[799] *See* Letter to Ben Bernanke, Chairman, Board of Governors of the Federal Reserve System, from the National Consumer Law Center, Consumer Federation of America, Center for Responsible Lending, Consumer Action, Consumers Union, National Association of Consumer Advocates, National Consumers League and U.S. PIRG, *Comments on Improving the U.S. Payment System,* at 8 (Dec. 13, 2013), *available at https://fedpaymentsimprovement.org/wp-content/uploads/2013/12/Response-Natl_Consumer_Law_Center_et_al-121313.pdf.*

[800] For example, Regions Bank instructs consumers that "If you are attempting to stop payment on an ACH draft, you must provide the exact amount of the draft or the stop payment cannot be placed." *See* Regions Bank, *Frequently Asked Questions, http://www.regions.com/FAQ/lost_stolen.rf* (last visited May 17, 2016).

[801] *See* Wells Fargo, *Instructions for Stopping Payment, https://www.wellsfargo.com/help/faqs/order-checks/* (last visited May 17, 2016) ("ACH items—Please provide the Company Name, Account Number, ACH Merchant ID and/or Company ID (can be found by reviewing a previous transaction) and Amount of item.").

[802] Through market outreach, the Bureau has learned that ACH used to only be allowed for recurring authorizations. Future transactions could be stopped relatively easily because the bank could use the merchant identification information (in this case, the name the lender or its payment processor puts in the ACH file) that was on prior preauthorized debits. However, now that the ACH network can also be used to initiate one-time payments, a bank may not know which merchant identifier to use. In addition, some merchants (including lenders) are gaming the system by changing merchant identifiers to work around stop payments.

[803] *See* Wells Fargo Instructions for Stopping Payment ("You can request a stop payment online (check only), by phone (check and ACH items) or by visiting your local store and speaking with a banker."), *https://www.wellsfargo.com/help/faqs/order-checks/* (last visited May 17, 2016).

[804] The Bureau has received complaints from consumers alleging that banks told consumers that the bank could not do anything about unauthorized transactions from payday lenders and that the bank would not stop future debits.

[805] *See also,* New Economy Project Letter to Federal Banking Regulators, at 1-2 (September 2014), *available at http://www.neweconomynyc.org/wp-content/uploads/2014/11/letter.pdf* ("People have often found that their financial institution fails to honor requests to stop payment of recurring payments; has inadequate systems for implementing stop payment orders and preventing evasions of those orders; charges inappropriate or multiple fees; and refuses to permit consumers to close their accounts.").

4. Private Network Protections Have Limited Impact

Finally, while payday industry presentment practices are so severe that they have prompted recent actions by the private rulemaking body that governs the ACH network, the Bureau is concerned that these efforts will be insufficient to solve the problems discussed above. As discussed above in part II B., the private NACHA rules provide some protections in addition to those currently provided by law. Specifically, the NACHA rules limit re-presentment of any one single failed payment to two additional attempts and provide that any lender with a total return level of 15 percent or above may be subject to an inquiry process by NACHA. However, the narrow scope of these rules, limited private network monitoring and enforcement capabilities over them, and applicability to only one payment method mean that they are unlikely to entirely solve problematic practices in the payday and payday installment industries.

Reinitiation Cap

NACHA rules have historically provided a reinitiation cap, which limits re-presentment of a failed payment to two additional attempts. Compliance with this requirement is difficult to monitor and enforce.[807] Although ACH files are supposed to distinguish between collection of a new payment and reinitiation of a prior one, some originators do not comply with this requirement to label reinitiated transactions.[808] Since the ACH system does not record whether the payment is for a loan and accordingly cannot identify the terms of the loan, including whether it is a single-payment loan or an installment loan with a series of scheduled payments, there is limited ability to distinguish reinitiations (and potential NACHA rule violations) from the next installment payment. Unless a lender labels the attempt as a reinitiation, the ACH system cannot otherwise distinguish between, *e.g.*, the second attempt to collect a payment for January 1 and the first attempt to collect the next payment due on February 1.[809]

Even if the rule were not subject to ready evasion by originating entities, the cap also does not apply to future payments in an installment payment schedule. Accordingly, if a failed payment on a previously scheduled payment is followed by a payment attempt on the next scheduled payment, that second attempt is not considered a reinitiation and does not count toward the cap. For example, each month that a monthly loan payment does not go through, NACHA rules allow that payment to be presented a total of three times with three fees to the consumer. And then the following payment due during the next month can proceed despite any prior failures. Bureau analysis suggests that online lenders are re-submitting ACH payment attempts soon after a failure rather than simply waiting for the next scheduled payment date to attempt to collect.[810]

Total Return Rate Level

According to a NACHA rule that went into effect in September 2015, originators[811] with a total return rate of 15 percent or above are subject to an inquiry process by NACHA.[812] This return rate includes returns for reasons such as non-sufficient funds, authorization revoked by consumer, administrative issues (such as an invalid account number), and stop payment orders. It does not include returns of re-presented checks, which are ACH re-presentments of payments that were first attempted through the check clearing network. Exceeding this threshold does not necessarily violate NACHA rules, but rather allows NACHA to demand additional information from the lender's originating depository financial institution (ODFI) for the purpose of determining whether the ODFI should lose access to the ACH system.[813] During this process, the ODFI may be able to justify a high return rate depending on the lender's business model and other factors.[814] NACHA set the threshold at 15 percent to allow flexibility for a variety of business models while identifying originators that were burdening the ACH system.[815]

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[806] *See* Jessica Silver-Greenberg, *Major Banks Aid in Payday Loans Banned by States,* NY Times (Feb. 23, 2013), *available at http://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html* (discussing allegations against JP Morgan Chase about consumer difficulties in revoking authorization and stopping payment on online payday loans); Complaint at 11, *Baptiste,* No. 1:12-CV-04889 (alleging that a bank employee told the plaintiff that the bank "could not stop the debits from payday lenders, and that she should instead contact the payday lenders to tell them to stop debiting her account").

[807] *See* FFIEC, *Bank Secrecy Act/Anti-Money Laundering Exam Manual,* at 238 ("Transactions should be monitored for patterns that may be indicative of attempts to evade NACHA limitations on returned entries. For example, resubmitting a transaction under a different name or for slightly modified dollar amounts can be an attempt to circumvent these limitations and are violations of the NACHA Rules.").

[808] NACHA Request for Comment and Request for Information—ACH Network Risk and Enforcement Topics, Rule Proposal Description, at 6-7 (proposing amendments in response to lack of compliance with requirement to label reinitiated transactions) ("NACHA has reason to believe that some high-risk Originators may ignore or attempt to evade the requirements of the Reinitiation Rule, including by changing content in various fields to make an Entry appear to be a new Entry, rather than a reinitiation. . . . For additional clarity, NACHA proposes to include in the Reinitiation Rule common examples that would be considered reinitiating an Entry to avoid arguments, for example, that adding a fee to an Entry creates a new Entry or that attempting to resubmit for a lesser amount takes the Entry outside of these limitations.").

[809] NACHA explicitly excludes scheduled payments from its reinitiation rule. See explanation in *id.* at 7 (explaining that "the proposal would clarify that a debit Entry in a series of preauthorized recurring debit Entries will not be treated as a reinitiated Entry, even if the subsequent debit Entry follows a returned debit Entry, as long as the subsequent Entry is not contingent upon whether an earlier debit Entry in the series has been returned.").

[810] *CFPB Online Payday Loan Payments,* at 16-18 figs. 2-4.

[811] The return rate level is calculated for individual entities like lenders and payment processors that direct an ODFI to debit a consumer's account on the entities' behalf. *See* NACHA Rule 2.17.2; NACHA Rule 8.6 (defining "originator");

[812] *See* NACHA Rule 2.17.2; NACHA, *ACH Network Risk and Enforcement Topics, https://www.nacha.org/rules/ach-network-risk-and-enforcement-topics* (last visited May 17, 2016) ("The Rule will establish an inquiry process that will provide NACHA with a preliminary evaluation point to research the facts behind an Originator's ACH activity. Preliminary research, as part of the inquiry process, begins when any Originator exceeds the established administrative return rate or overall return rate level. The review process involves eight steps, and includes an opportunity for NACHA and an industry review panel to review an Originator's ACH activity prior to any decision to require a reduction in a return rate. The inquiry process does not automatically trigger a Rules enforcement activity.") ("The rule does not automatically require an ODFI to reduce an Originator's return rate below 15 percent; as such, it is meant to be flexible in accounting for differing needs of a variety of businesses. The rule would require an ODFI to reduce an Originator's return rate below 15 percent if directed to do so by the industry review panel.").

[813] *See* NACHA Rule 2.17.2.

[814] *See* NACHA, *ACH Network Risk and Enforcement Topics: FAQs, available at https://www.nacha.org/rules/ach-network-risk-and-enforcement-topics* (last visited May 16, 2016).

The inquiry process is an opportunity for the ODFI to present, and for NACHA to consider, specific facts related to the Originator's or Third-Party Sender's ACH origination practices and activity. At the conclusion of the preliminary inquiry, NACHA may determine that no further action is required, or may recommend to an industry review panel that the ODFI be required to reduce the Originator's or Third-Party Sender's overall or administrative return rate below the Return Rate Level. . . . In reviewing the results of a preliminary inquiry, the industry review panel can consider a number of factors, such as: (1) The total volume of forward and returned debit Entries; (2) The return rate for unauthorized debit Entries; (3) Any evidence of Rules violations, including the rules on reinitiation; (4) Any legal investigations or regulatory actions; (5) The number and materiality of consumer complaints; (6) Any other relevant information submitted by the ODFI.

[815] *See* NACHA, *Request for Comment and Request for Information,* at 5 ("By setting the

However, the Bureau is concerned that lenders can adopt problematic payment practices and remain below this inquiry level; in the Bureau's analysis of ACH payments attempts by online payday and payday installment lenders, the Bureau observed an overall lender NSF return rate of 10.1 percent.[816] At the time that NACHA first proposed this limit, the overall rate of returns for debit transactions in the ACH system was 1.5 percent.[817]

Monitoring and Enforcement of the New Total Return Rate Level

NACHA has a limited ability to monitor return rates. First, NACHA has no ability to monitor returns based on a particular lender. All of the return information it receives is sorted by the originating depository financial institutions that are processing the transactions, rather than at the level of the individual lenders that is accessing the ACH network. Since lenders sometimes use multiple ODFI relationships to process their payments,[818] the returns used in the NACHA threshold may not provide a full picture of a lender's payment activity. In addition, NACHA has no ability to monitor or calculate return rates on an ongoing basis. Although it receives return volume reports from the ACH operators (the Federal Reserve and The Clearinghouse), these reports do not contain the successful payment volume information that is necessary to calculate a return rate. Rather, NACHA relies on financial institutions to bring suspect behavior to its attention, which provides it with a basis to investigate further and request more detailed payment reports.

As discussed in part II B., the Bureau is aware that lenders often obtain access to multiple payment methods, such as check, ACH, and debit card. Since private payment networks do not combine return activity, there is no monitoring of a lender's overall returns across all payment types. Payments that begin as checks and then are re-presented as ACH payments, a practice that is not uncommon among storefront payday lenders, are excluded from the NACHA return rate threshold. The Bureau is also aware that lenders sometimes alternate between payment networks to avoid triggering scrutiny or violation of particular payment network rules. Processor marketing materials, Bureau staff conversations with industry, and documents made public through litigation indicate that the NACHA unauthorized return and total return rate thresholds have already prompted migration to remotely created checks and debit network transactions, both of which are not covered by the NACHA rules.[819]

Particularly in light of payday lenders' past behavior, the Bureau believes that substantial risk to consumers remains. Although private network rules may improve lender practices in some respects, they have gaps and limited consequences—there is no systematic way to monitor lender payment practices in the current ACH system, or more broadly for practices across all payment channels. In addition, because NACHA rules are private, there is no guarantee for the public that they will exist in the same, or an improved, form in the future. For all of these reasons, the private ACH network rules are unlikely to fully solve the problematic practices in this market.

Section 1041.13 Identification of Unfair and Abusive Practice—Payments

As discussed above, it is a common practice for lenders in various types of credit markets to obtain consumers' authorizations to withdraw payment from their bank accounts with no further action required from the consumer after initially granting authorization. One common example of this practice is for creditors to obtain a consumer's authorization in advance to initiate a series of recurring electronic fund transfers from the consumer's bank account. The Bureau believes that this practice often can be beneficial for creditors and consumers alike by providing a relatively speedy, predictable, and low-cost means of repayment. Nonetheless, based on the evidence summarized in Market Concerns—Payments, the Bureau also believes that lenders in the markets for payday and payday installment loans often use such payment authorizations in ways that may cause substantial harms to consumers who are especially vulnerable, particularly when lenders continue making payment withdrawal attempts after one or more attempts have failed due to nonsufficient funds. As detailed below, the Bureau believes this evidence appears to support both a regulation that would alert consumers in advance of upcoming payment withdrawal attempts and a regulation that would provide specific consumer protections against unfair and abusive lender conduct when past payment withdrawal attempts have failed.

Based on the evidence described in Market Concerns—Payments and pursuant to its authority under section 1031 of the Dodd-Frank Act, the Bureau is proposing in § 1041.13 to identify it as both an unfair and abusive practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. In this context, an "attempt to withdraw payment from a consumer's account" means a lender-initiated debit or withdrawal from the account for purposes of collecting any amount due or purported to be due in connection with a covered loan, regardless of the particular payment method used by the lender to initiate the debit or withdrawal. The proposed identification thus would apply to all common methods of withdrawing payment from consumers' accounts, including but not limited to the following methods: Electronic fund transfers (including preauthorized electronic fund transfers), without regard to the particular type of payment device or instrument used; signature checks; remotely created checks; remotely created payment orders; and an account-holding institution's withdrawal of funds held at the same institution. The Bureau's basis for this proposed identification is discussed in detail below.

a. Unfair Practice

Under § 1031(c)(1) of the Dodd-Frank Act, the Bureau shall have no authority to declare an act or practice unfair unless it has a reasonable basis to conclude that it "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers" and such substantial, not

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threshold at approximately 10 times the ACH Network average, NACHA believes that sufficient leeway will be permitted for businesses that attempt to service high risk communities without creating return rates that significantly increase costs on RDFIs and raise questions about the quality of the origination practices.").

[816] This return rate does not include same-day presentments; with same-day presentments included, the overall return rate is 14.4%. The NACHA reinitiation cap was in effect during the Bureau's sample period of 2011-2012. The overall return rate level rule went into effect in September 2015.

[817] NACHA, *Request for Comment and Request for Information—ACH Network Risk and Enforcement Topics*, at 5.

[818] In order to access the ACH network, lenders must use an ODFI. A lender may not have a direct ODFI relationship if it is sending payments through a third party payment processor. In that case, the processor would have an ODFI relationship. A lender may have multiple ODFI and processor relationships, such as different relationships for different loan products or regions.

[819] *See, e.g.*, FTC Final Amendments to Telemarketing Sales Rule, 80 FR 77520, 77532 (Dec. 14, 2015) (discussing marketing by payment processors).

reasonably avoidable injury "is not outweighed by countervailing benefits to consumers or to competition." The Bureau believes that it may be an unfair act and practice to attempt to withdraw payment from a consumer's account in connection with a covered loan after the second consecutive attempt has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account.

1. Causes or Is Likely To Cause Substantial Injury

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law.[820] Under these authorities, as discussed in part IV, substantial injury may consist of a small amount of harm to a large number of individuals or a larger amount of harm to a smaller number of individuals.

In this case, the lender act or practice of attempting to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account, appears to cause or to be likely to cause substantial injury to consumers. As discussed above, each additional attempt by the lender is likely to trigger substantial additional fees for the consumer but unlikely to result in successful collection for the lender. These additional attempts can cause serious injury to consumers who are already in substantial financial distress, including, in addition to the cumulative fees that the consumers owe both to the lender and their account-holding institution, increasing the risk that the consumers will experience account closure.

Specifically, the Bureau conducted analysis of online lenders' attempts to collect payments through the ACH system on covered loans with various payment structures, including traditional payday loans with a single balloon payment and high-cost installment loans, typically with payments timed to coincide with the consumer's payday. The Bureau's analysis indicates that the failure rate after two consecutive unsuccessful attempts is 73 percent, even when re-presentments appear to be timed to coincide with the consumer's next payday or the date of the next scheduled payment, and further worsens on subsequent attempts.[821] Return rates for resubmissions of returned signature checks, RCCs, and RCPOs through the check system are not as readily observable. Nonetheless, it is reasonable to assume that lenders' resubmissions of failed payment withdrawal attempts through the check clearing system would yield high failure rates as well.[822] Similarly, when a lender that is also the consumer's account-holding institution has already initiated two consecutive failed internal transfers to withdraw payment on a loan despite having more information about the condition of the consumer's account than other lenders generally have, there is no reason to assume that the lender's next attempt to withdraw payment from the severely distressed account is any more likely to yield better results.[823]

Consumers who are subject to the lender practice of attempting to withdraw payment from an account after two consecutive attempts have failed are likely to have incurred two NSF fees from their account-holding institution[824] and, where permitted, two returned-payment fees from the lender by the time the third attempt is made. Accordingly, these consumers already may have incurred more than $100 in fees in connection with the first two failed attempts. As a result of lenders' attempts to withdraw payment from their accounts after the failure of a second consecutive attempt, most of these consumers will incur significant additional monetary and other harms. In the vast majority of cases, the third withdrawal attempt fails and thereby triggers additional NSF fees charged by the consumer's account-holding institution and additional returned-item fees charged by the lender. Indeed, the Bureau's evidence suggests that 73 percent of consumers who experience a third withdrawal attempt after two prior failures incur at least one additional NSF fee (bringing their total to three and total cost in NSF fees to over $100), 36 percent end up with at least two, and 10 percent end up with at least three additional fees (meaning in most cases they will have been charged approximately $175 in fees by their account-holding institution). The addition of a lender's returned-item fees can double these costs. These fees are imposed even for returned or declined payment withdrawal attempts for which the account-holding institution may not charge a fee, such as attempts made by debit cards and certain prepaid cards. Moreover, in the relatively small number of cases in which such a withdrawal attempt does succeed, Bureau research suggests that roughly one-third of the time, the consumer is likely to have been charged an overdraft fee of approximately $34.[825]

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[820] Over the past several decades, the FTC and Federal banking regulators have promulgated a number of rules addressing acts or practices involving financial products or services that the agencies found to be unfair under the FTC Act (the 1994 amendments to which codified the FTC Policy Statement on Unfairness). For example, in the Credit Practices Rule that the FTC promulgated in 1984, the FTC determined that certain remedies that creditors frequently included in credit contracts for use when consumers defaulted on the loans were unfair, including confessions of judgments, irrevocable wage assignments, security interests in household goods, waivers of exemption, pyramiding of late charges, and cosigner liability. 49 FR 7740 (March 1, 1984) (codified at 16 CFR 444). The D.C. Circuit upheld the FTC rule as a permissible exercise of unfairness authority. *AFSA*, 767 F.2d at 957. The Federal Reserve Board adopted a parallel rule applicable to banks in 1985. (The Federal Reserve Board's parallel rule was codified in Regulation AA, 12 CFR part 227, subpart B. Regulation AA has been repealed as of March 21, 2016, following the Dodd-Frank Act's elimination of the Federal Reserve Board's rule writing authority under the FTC Act. *See* 81 FR 8133 (Feb. 18, 2016)). In 2009, in the HPML Rule, the Federal Reserve Board found that disregarding a consumer's repayment ability when extending a higher-priced mortgage loan or HOEPA loan, or failing to verify the consumer's income, assets, and obligations used to determine repayment ability, is an unfair practice. *See* 73 FR 44522 (July 30, 2008). The Federal Reserve Board relied on a statutory basis for its exercise of unfairness authority pursuant to TILA section 129(l)(2), 15 U.S.C. 1639(l)(2) (renumbered to 15 U.S.C. 1639(p)(2), which incorporated the provisions of HOEPA. The Federal Reserve Board interpreted the HOEPA unfairness standard to be informed by the FTC Act unfairness standard. *See* 73 FR 44529 (July 30, 2008). That same year, the Federal Reserve Board, the OTS, and the NCUA issued the interagency Subprime Credit Card Practices Rule, where the agencies concluded that creditors were engaging in certain unfair practices in connection with consumer credit card accounts. *See* 74 FR 5498 (Jan. 29, 2009).

[821] The analysis indicates that of the 20 percent of payment requests following a second failed payment request that occur between 14 and 15 days, 84 percent fail. *CFPB Online Payday Loan Payments*, at 16. In addition, the analysis indicates that while re-presentments at 30 days are rare, more than half of all that occur at 30 days fail. *Id.* at 18 fig.4. The Bureau believes that these data show that even if the re-presentment is on the consumer's next payday, which is likely to be the date of the consumer's next scheduled payment on an installment loan, it is also likely to fail.

[822] Indeed, as discussed in Market Concerns—Payments, information reported by storefront lenders suggests that when such lenders make payment withdrawal attempts using the consumer's check—typically in cases where the consumer does not come into the store to repay—the failure rates for such attempts are as high as or higher than those for presentments through the ACH system.

[823] As discussed in Market Concerns—Payments, the Bureau is aware of some depository institutions that have charged overdraft and NSF fees for payments made within the institutions' internal systems, including a depository institution that charged overdraft and NSF and fees on payments related to its small dollar loan product.

[824] Although lenders do not directly charge these particular fees, their actions cause the fees to be charged. Furthermore, lenders know that consumers generally will incur fees from their account-holding institutions for failed payments.

In addition to incurring these types of fees, consumers who experience two or more consecutive failed lender payment attempts appear to be at greater risk of having their accounts closed by their account-holding institution. Specifically, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that 43 percent of accounts with two consecutive failed lender payment withdrawal attempts were closed by the depository institution, as compared with only 3 percent of accounts generally.[826]

2. Injury Not Reasonably Avoidable

As previously noted in part IV, under the FTC Act and Federal precedents that inform the Bureau's interpretation and application of the unfairness test, an injury is not reasonably avoidable where "some form of seller behavior . . . unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decision-making," or, unless consumers have reason to anticipate the injury and the means to avoid it. The Bureau believes that in a significant proportion of cases, unless the lender obtains the consumer's new and specific authorization to make further payment withdrawals from the account, consumers may be unable to reasonably avoid the injuries that result from the lender practice of attempting to withdraw payment from a consumer's account in connection with a covered loan after two consecutive payment withdrawal attempts by the lender have failed.

Consumers could avoid the above-described substantial injury by depositing into their accounts enough money to cover the lender's third payment withdrawal attempt and every attempt that the lender may make after that, but for many consumers this is not a reasonable or even available way of avoiding the substantial injury discussed above. Even if a consumer had sufficient funds to do so and knew the amount and timing of the lender's next attempt to withdraw payment, any funds deposited into the consumer's account likely would be claimed first by the consumer's bank to repay the NSF fees charged for the prior two failed attempts. Thus, even a consumer who had some available cash would have difficulties in avoiding the injury resulting from the lender's third attempt to withdraw payment, as well as in avoiding the injury resulting from any attempts that the lender may make after the third one.[827]

Moreover, as a practical matter, in the vast majority of cases in which two consecutive attempts to withdraw payment have failed, the consumer is in severe financial distress and thus does not have the money to cover the next payment withdrawal attempt.[828] Although the Bureau's consumer testing indicates that consumers generally have a strong commitment to repaying their legal obligation,[829] a consumer who has already experienced two consecutive failed payment attempts and incurred well over $100 in related fees may at that point consider either closing down the account or attempting to stop payment or revoke authorization as the only other options to avoid further fee-related injury. Given that consumers use their asset accounts to conduct most of their household financial transactions, the Bureau does not interpret voluntarily closing down the account as being a reasonable means for consumers to avoid injury.

Further, as discussed in Market Concerns—Payments, there are several reasons that the option of attempting to stop payment or revoke authorization is not a reasonable means of avoiding the injuries, either. First, consumers often face considerable challenges in issuing stop payment orders or revoking authorization as a means to prevent lenders from continuing to attempt to make payment withdrawals from their accounts. Complexities in payment processing systems and the internal procedures of consumers' account-holding institutions, combined with lender practices, often make it difficult for consumers to stop payment or revoke authorization effectively. With respect to preauthorized electronic fund transfers authorized by the consumer, for example, even if the consumer successfully stops payment on one transfer, the consumer may experience difficulties in blocking all future transfers by the lender. In addition, payment withdrawal attempts made via RCC or RCPO can be especially challenging for the consumer's account-holding institution to identify and to stop payment on.

Various lender practices exacerbate these challenges. As discussed above, lenders often obtain several different types of authorizations from consumers—*e.g.*, authorizations to withdraw payment via both ACH transfers and RCCs—such that if the consumer successfully revokes one authorization, the lender has the ability to continue making payment collection attempts using the other authorization. The procedures of consumers' account-holding institutions for stopping payment often vary depending on the type of authorization involved. Thus, when a lender has obtained two different types of authorizations from the consumer, the considerable challenges associated with stopping payment or revocation in connection with just one type of authorization are effectively doubled. Many consumers may not understand that they must navigate two different sets of stop payment or revocation procedures to prevent the lender from making additional withdrawal attempts.

In addition, the costs to the consumer for issuing a stop payment order or revoking authorization are often as high as some of the fees that the consumer is trying to avoid. As discussed above, depository institutions charge consumers a fee of approximately $32, on average, for placing a stop payment order. The consumer incurs this fee regardless of whether the consumer is seeking to stop payment on a check (including an RCC or RCPO), a single electronic fund transfer, or all future electronic fund transfers authorized by the consumer. Moreover, issuing a stop payment order at a cost of $32 does not guarantee success. Some depository institutions require the consumer to provide the exact payment amount or the lender's merchant ID code, and thus fail to block payments when the payment amount varies or the lender varies the merchant code. In addition, some depository institutions require consumers to renew stop payment orders after a certain period of time. In such cases, consumers may incur more than one stop payment fee in order to continue blocking future payment withdrawal attempts by the lender.

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[825] Thus, even when the consumer does not incur NSF fees from her account-holding institution as a result of a lender payment withdrawal attempt made in connection with a covered loan after two consecutive attempts have failed, the consumer still has a roughly one-in-three chance of incurring an overdraft fee as a result of the subsequent lender attempt. Moreover, at the time lenders choose to make further attempts to withdraw payment from the account, the lenders should be on notice that the account is severely distressed (as evidenced by the prior two consecutive returns) and that additional attempts thus are likely to cause further injury to the consumer, be it from NSF fees, lender-charged returned-item fees, or, as the Bureau's analysis indicates, overdraft fees charged by the consumer's account-holding institution.

[826] *CFPB Report on Supplemental Findings*, at ch. 6.

[827] As discussed in the section-by-section analysis of proposed § 1041.15, the Bureau is proposing as part of this rulemaking to require lenders to provide a notice to consumers in advance of each payment withdrawal attempt. The Bureau believes that the proposed notice will help consumers make choices that may reduce potential harms from a payment withdrawal attempt—by reminding them, for example, to deposit money into their accounts prior to the attempt and thus avoid a late payment fee. However, as discussed above, the Bureau believes that consumers who are subject to the specific lender practice of making payment withdrawal attempts after two consecutive attempts have failed no longer have the practicable or reasonable means to avoid the harms from the further attempts.

[828] The Bureau believes that even when consumers have agreed to make a series of payments on an installment loan, the substantial injuries discussed above are not reasonably avoidable. As noted above, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that after two failed presentments, even payment withdrawal attempts timed to the consumer's next payday, which is likely to be the date of the next scheduled payment on an installment loan, are likely to fail.

[829] *FMG Report*, at 53.

As a result of these stop payment fees, the cost to the consumer of stopping payment with the consumer's account-holding institution is comparable to the NSF fee or overdraft fee that the consumer would be charged by the institution if the payment withdrawal attempt that the consumer is seeking to stop were made. Thus, even if the consumer successfully stops payment, the consumer would not avoid this particular fee-related injury but rather would be exchanging the cost of one fee for another. In addition, some consumers may be charged a stop payment fee by their account-holding institution even when, despite the stop payment order, the lender's payment withdrawal attempt goes through. In such cases, the consumer may be charged both a fee for the stop payment order and an NSF or overdraft fee triggered by the lender's payment withdrawal attempt.

In addition to the challenges consumers face when trying to stop payment or revoke authorization with their account-holding institutions, consumers often face lender-created barriers that prevent them from pursuing this option as an effective means of avoiding injury. Lenders may discourage consumers from pursuing this course of action by including language in loan agreements purportedly prohibiting the consumer from stopping payment or revoking authorization. In some cases, lenders may charge consumers a substantial fee in the event that they successfully stop payment with their account-holding institution. Lenders' procedures for revoking authorizations directly with the lender create additional barriers. As discussed above, lenders often require consumers to provide written revocation by mail several days in advance of the next scheduled payment withdrawal attempt. If a consumer who wishes to revoke authorization took out the loan online, she may have difficulty even identifying the lender that holds the authorization, especially if she was paired with the lender through a third-party lead generator. These lender-created barriers make it difficult for consumers to stop payment or revoke authorization in general, but can create particular difficulties for consumers who wish to revoke authorizations for repayment by recurring electronic fund transfers under Regulation E, given that the consumer's account-holding institution is permitted under Regulation E to require the consumer to confirm the consumer has informed the lender of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.[830]

3. Injury Not Outweighed by Countervailing Benefits to Consumers or Competition

As noted in part IV, the Bureau's interpretation of the various prongs of the unfairness test is informed by the FTC Act, the FTC Policy Statement on Unfairness, and FTC and other Federal agency rulemakings and related case law. Under those authorities, it generally is appropriate for purposes of the countervailing benefits prong of the unfairness standard to consider both the costs of imposing a remedy and any benefits that consumers enjoy as a result of the practice, but the determination does not require a precise quantitative analysis of benefits and costs.

The Bureau proposes to find that the lender act or practice of making additional payment withdrawal attempts from a consumer's account in connection with a covered loan after two consecutive attempts have failed, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account, generates benefits to consumers or competition that outweigh the injuries caused by the practice. As discussed above, the substantial majority of additional attempts are likely to fail. Indeed, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders finds that the failure rate on the third attempt is 73 percent, and that failure rates increase to 83 percent on the fourth attempt and to 85 percent on the fifth attempt. Furthermore, of those attempts that succeed, 33 percent or more succeed only by overdrawing the consumer's account.

When a third or subsequent attempt to withdraw payment does succeed, the consumer making the payment may experience some benefit—but only if the payment does not overdraw the consumer's account *and* the amount collected is sufficient to bring the consumer's loan current or pay off all of what is owed, thereby permitting the consumer to avoid further payment withdrawal attempts or collections activity. It is unclear how often this combination of events occurs for this set of consumers. In any event, the Bureau believes that to the extent that there are some consumers who, after two consecutive failed attempts, are able to muster sufficient funds to make the required payment or payments, these consumers would be able to arrange to make their payment or payments even if lenders were prohibited from making additional payment attempts absent a new and specific authorization from the consumer, such as by paying in cash, mailing in a money order, or making one or more ACH "push" payments from their accounts.

Turning to the potential benefits of the practice to competition, the Bureau recognizes that to the extent that payment withdrawal attempts succeed when made after two consecutive failed attempts, lenders may collect larger payments or may collect payments at a lower cost than they would if they were required to seek payment directly from the consumer rather than from the consumer's account. Given their high failure rates, however, these additional attempts generate relatively small amounts of revenue for lenders. For example, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that the expected value of a third successive payment attempt is only $46, and that the expected value drops to $32 for the fourth attempt and to $21 for the fifth attempt. Furthermore, as noted above, the Bureau believes that lenders could obtain much of this revenue without making multiple attempts to withdraw payment from demonstrably distressed accounts. For instance, lenders could seek payments in cash or "push" payments from the consumer, or, in the alternative, seek a new and specific authorization from the consumer to make further payment withdrawal attempts. Indeed, coordinating with the consumer to seek a new authorization may be more likely to result in successful payment withdrawal attempts than does the practice of repeatedly attempting to withdraw or transfer funds from an account in distress. Finally, in view of the pricing structures observed in the markets for loans that would be covered under the proposed rule, the Bureau does not believe that any incremental revenue benefit to lenders from subsequent attempts, including revenue from fees charged for failed attempts, translates into more competitive pricing or, put differently, that prohibiting such attempts would adversely affect pricing. In sum, the substantial injuries that consumers incur as a result of the practice, as discussed above, are not outweighed by the minimal benefits that this practice generates for consumers or competition.

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[830] Consumers incur lender-charged fees from which they cannot protect themselves even when their account-holding institutions may not charge a fee for returned or declined payment withdrawal attempts made using a particular payment method, such as attempts made by debit cards and certain prepaid cards. In addition, consumers sometimes incur lender-charged fees for successfully stopping payment or revoking authorization.

b. Abusive Practice

Under § 1031(d)(2)(A) and (B) of the Dodd-Frank Act, the Bureau shall have no authority to declare an act or practice abusive unless it takes unreasonable advantage of "a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service" or of "the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service." Based on the evidence discussed in Market Concerns—Payments, the Bureau proposes to find that, with respect to covered loans, it is an abusive act or practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after two consecutive failed attempts, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account.

1. Consumers Lack Understanding of Material Risks and Costs

The Bureau believes that consumers understand generally when granting an authorization to withdraw payment from their account that they may incur an NSF fee from their account-holding institution and a lender-charged returned-item fee if a payment is returned, on either a single-payment or installment loan, or a fee from their account-holding institution if the institution is also the lender. However, the Bureau does not believe that such a generalized understanding suffices to establish that consumers understand the material costs and risks of a product or service. Rather, the Bureau believes that it is reasonable to interpret "lack of understanding" in this context to mean more than mere awareness that it is within the realm of possibility that a particular negative consequence may follow or cost may be incurred as a result of using the product. For example, consumers may not understand that a risk is very likely to happen or that—though relatively rare—the impact of a particular risk would be severe.

In this instance, precisely because the practice of taking advanced authorizations to withdraw payment is so widespread across markets for other credit products and non-credit products and services, the Bureau believes that consumers lack understanding of how the risk they are exposing themselves to by granting authorizations to lenders making proposed covered loans. Rather, consumers are likely to expect payment withdrawals made pursuant to their authorizations to operate in a convenient and predictable manner, similar to the way such authorizations operate when granted to other types of lenders and in a wide variety of other markets. Consumers' general understanding that granting authorization can sometimes result in their incurring such fees does not prepare them for the substantial likelihood that, in the event their account becomes severely distressed, the lender will continue making payment withdrawal attempts even after the lender should be on notice (from two consecutive failed attempts) of the account's condition, and that they thereby will be exposed to substantially increased overall loan costs in the form of cumulative NSF or overdraft fees from their account-holding institution and returned-item fees from their lender, as well as to the increased risk of account closure. Moreover, this general understanding does not prepare consumers for the array of significant challenges they will encounter if, upon discovering that their lender is still attempting to withdraw payment after their account has become severely distressed, they take steps to try to stop the lender from using their authorizations to make any additional attempts.

2. Consumers Are Unable To Protect Their Interests

The Bureau proposes to find that it takes unreasonable advantage of consumers' inability to protect their interests when a lender attempts to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. Once consumers discover that lenders are using their authorizations in this manner, it is too late for them to take effective action. While consumers could try to protect themselves from the harms of additional payment withdrawal attempts by closing down their accounts entirely, the Bureau does not interpret taking this action as being a practicable means for consumers to protect their interests, given that consumers use their accounts to conduct most of their household financial transactions. Accordingly, as discussed above, often the only option for most consumers to protect themselves (and their accounts) from the harms of lender attempts to withdraw payment after two consecutive attempts have failed is to stop payment or revoke authorization.[831] However, consumers often face considerable challenges and barriers when trying to stop payment or revoke authorization, both with their lenders and their account-holding institutions. These challenges and barriers make this option an impracticable means for consumers to protect themselves from the harms of further payment withdrawal attempts.

As discussed above, lenders may discourage consumers from stopping payment or revoking authorization by including language in loan agreements purporting to prohibit revocation. Some lenders may charge consumers a substantial fee for stopping payment with their account-holding institutions. Lenders' procedures for revoking authorizations directly with the lender create additional barriers to stopping payment or revoking authorization effectively. For example, as discussed above, lenders often require consumers to provide written revocation by mail several days in advance of the next scheduled payment withdrawal attempt. Some consumers may even have difficulty identifying the lender that holds the authorization, particularly if the consumers took out the loan online and were paired with the lender through a third-party lead generator. These and similar lender-created barriers—while challenging for consumers in all cases—can make it particularly difficult for consumers to revoke authorizations for repayment by recurring transfers under Regulation E, given that a consumer's account-holding institution is permitted under Regulation E to confirm the consumer has informed the lender of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

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[831] As discussed above, even if consumers have enough money to deposit into their accounts prior to the next payment withdrawal attempt, those funds likely would be claimed first by the consumer's account-holding institution to repay the NSF fees charged for the prior two failed attempts. Thus, there is still a risk of additional consumer harm from a third attempt in such situations, as well as from any attempts the lender may make after the third one, unless the consumer carefully coordinates the timing and amounts of the attempts with the lender. In addition, the Bureau believes that even when consumers have agreed to make a series of payments on an installment loan, consumers are unable to protect their interests. As noted above, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that after two failed presentments, even payment withdrawal attempts timed to the consumer's next payday, which is likely to be the date of the next scheduled payment on an installment loan, are likely to fail.

Consumers encounter additional challenges when trying to stop payment with their account-holding institutions. For example, due to complexities in payment processing systems and the internal procedures of consumers' account-holding institutions, consumers may be unable to stop payment on the next payment withdrawal attempt in a timely and effective manner. Even if the consumer successfully stops payment with her account-holding institution on the lender's next payment attempt, the consumer may experience difficulties blocking all future attempts by the lender, particularly when the consumer has authorized the lender to make withdrawals from her account via recurring electronic fund transfers. Some depository institutions require the consumer to provide the exact payment amount or the lender's merchant ID code, and thus fail to block payments when the payment amount varies or the lender varies the merchant code. Consumers are likely to experience even greater challenges in stopping payment on lender attempts made via RCC or RCPO, given account-holding institutions' difficulties in identifying such payment attempts. Further, if the lender has obtained multiple types of authorizations from the consumer—such as authorizations to withdraw payment via both ACH transfers and RCCs—the consumer likely will have to navigate different sets of complicated stop-payment procedures for each type of authorization held by the lender, thereby making it even more challenging to stop payment effectively.

Further, the fees charged by consumers' account-holding institutions for stopping payment are often comparable to the NSF fees or overdraft fees from which the consumers are trying to protect themselves. Depending on their account-institution's policies, some consumers may be charged a second fee to renew a stop payment order after a period of time. As a result of these costs, even if the consumer successfully stops payment on the next payment withdrawal attempt, the consumer will not have effectively protected herself from the fee-related injury that otherwise would have resulted from the attempt, but rather will have exchanged the cost of one fee for another. Additionally, in some cases, consumers may be charged a stop payment fee by their account-holding institution even when the stop payment order fails to stop the lender's payment withdrawal attempt from going through. As a result, such consumers may incur both a fee for the stop payment order and an NSF or overdraft fee for the lender's withdrawal attempt.[832]

3. Practice Takes Unreasonable Advantage of Consumer Vulnerabilities

Under section 1031 of the Dodd-Frank Act, an act or practice is abusive if it takes "unreasonable advantage" of consumers' lack of understanding of the material risks, costs, or conditions of consumer financial product or service or inability to protect their interests in selecting or using such a product or service. The Bureau believes that, with respect to covered loans, the lender act or practice of attempting to withdraw payment from a consumer's account after two consecutive attempts have failed, unless the lender obtains the consumer's new and specific authorization to make further withdrawals, may take unreasonable advantage of consumers' lack of understanding and inability to protect their interests, as discussed above, and is therefore abusive.

The Bureau recognizes that in any transaction involving a consumer financial product or service, there is likely to be some information asymmetry between the consumer and the financial institution. Often, the financial institution will have superior bargaining power as well. Section 1031(d) of the Dodd-Frank Act does not prohibit financial institutions from taking advantage of their superior knowledge or bargaining power to maximize their profit. Indeed, in a market economy, market participants with such advantages generally pursue their self-interests. However, section 1031 of the Dodd-Frank Act makes plain that there comes a point at which a financial institution's conduct in leveraging consumers' lack of understanding or inability to protect their interest becomes unreasonable advantage-taking and thus is potentially abusive.[833]

The Dodd-Frank Act delegates to the Bureau the responsibility for determining when that line has been crossed. The Bureau believes that such determinations are best made with respect to any particular act or practice by taking into account all of the facts and circumstances that are relevant to assessing whether such an act or practice takes unreasonable advantage of consumers' lack of understanding or of consumers' inability to protect their interests. The Bureau recognizes that taking a consumer's authorization to withdraw funds from the consumer's account without further action by the consumer is a common practice that frequently serves the interest of both lenders and consumers, and does not believe that this practice, standing alone, takes unreasonable advantage of consumers. However, at least with respect to covered loans, the Bureau proposes to conclude, based on the evidence discussed in this section and in Markets Concerns—Payments, that when lenders use such authorizations to make a payment withdrawal attempt after two consecutive attempts have failed, lenders take unreasonable advantage of consumers' lacking of understanding and inability to protect their interests, absent the consumer's new and specific authorization.

As discussed above, with respect to covered loans, the lender practice of continuing to make payment withdrawal attempts after a second consecutive failure generates relatively small amounts of revenues for lenders, particularly as compared with the significant harms that consumers incur as a result of the practice. Moreover, the cost to the lender of re-presenting a failed payment withdrawal attempt is nominal, thus permitting lenders to re-present, often repeatedly, at little cost to themselves and with little to no regard for the harms that consumers incur as a result of the re-presentments.

Specifically, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that the expected value of a third successive payment withdrawal attempt is only $46 (as compared with $152 for a first attempt), and that the expected value drops to $32 for the fourth attempt and to $21 for the fifth attempt. And yet, despite these increasingly poor odds of succeeding, lenders continue to re-present, further suggesting that the consumers' payment authorizations have ceased at this point to serve their primary convenience purpose but instead have become a means for the lenders to extract small amounts of revenues from consumers any way they can.[834] In addition, as discussed above, lenders often charge consumers a returned-item fee for each failed attempt.[835] This provides lenders with an additional incentive to continue attempting to withdraw payment from consumers' accounts even after two consecutive attempts have failed. Although lenders are not able to collect such fees immediately, the fees are added to the consumer's overall debt and thus can be collected through the debt collection process. The Bureau believes that lenders could obtain much of this revenue without engaging in the practice of trying to withdraw payment from consumers' accounts after the accounts have exhibited clear signs of being in severe distress. For example, lenders could seek further payments in cash or ACH "push" payments from the consumer, or, in the alternative, seek a new and specific authorization from consumers to make further payment withdrawal attempts. Indeed, the Bureau believes that coordinating with the consumer to seek a new authorization may be more likely to result in successful payment withdrawal attempts than does the practice of repeatedly attempting to withdraw payments from an account in distress.

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[832] Even when consumers' account-holding institutions may not charge a fee for returned or declined payment withdrawal attempts made using a particular payment method, such as attempts made by debit cards and certain prepaid cards, consumers still incur lender-charged fees from which they cannot protect themselves. In addition, consumers sometimes incur lender-charged fees for successfully stopping payment or revoking authorization.

[833] A covered person also may take unreasonable advantage of one or more of the three consumer vulnerabilities identified in section 1031(d) of the Dodd-Frank Act in circumstances in which the covered person lacks such superior knowledge or bargaining power.

The Bureau seeks comment on the evidence and proposed findings and conclusions in proposed § 1041.13 and Market Concerns—Payments above.

Section 1041.14 Prohibited Payment Transfer Attempts

As discussed in the section-by-section analysis of § 1041.13, the Bureau is proposing to identify it as an unfair and abusive practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account. Thus, after a lender's second consecutive attempt to withdraw payment from a consumer's account has failed, the lender could avoid engaging in the unfair or abusive practice either by not making any further payment withdrawals or by obtaining from the consumer a new and specific authorization and making further payment withdrawals pursuant to that authorization.

Section 1031(b) of the Dodd-Frank Act provides that the Bureau may prescribe rules "identifying as unlawful unfair, deceptive, or abusive acts or practices" and may include in such rules requirements for the purpose of preventing unfair, deceptive, or abusive acts or practices. The Bureau is proposing to identify and prevent the unfair and abusive practice described above by including in proposed § 1041.14 requirements for determining when making a further payment withdrawal attempt constitutes an unfair or abusive act and for obtaining a consumer's new and specific authorization to make further payment withdrawals from the consumer's account. In addition to its authority under section 1031(b), the Bureau is proposing two provisions—§ 1041.14(c)(3)(ii) and (iii)(C)—pursuant to its authority under section 1032(a) of the Dodd-Frank Act. Section 1032(a) authorizes the Bureau to prescribe rules to ensure that the features of consumer financial products and services, "both initially and over the term of the product or service," are disclosed "fully, accurately, and effectively . . . in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." Both of the proposed provisions relate to the requirements for obtaining the consumer's new and specific authorization after the prohibition on making further payment withdrawals has been triggered.

In addition to the proposed provisions in § 1041.14, the Bureau is proposing in § 1041.15 a complementary set of requirements pursuant to its authority under section 1032 of the Dodd-Frank Act to require lenders to provide notice to a consumer prior to initiating a payment withdrawal from the consumer's account. The Bureau believes that these disclosures, by informing consumers in advance of the timing, amount, and channel of upcoming withdrawal attempts, will help consumers to detect errors or problems with upcoming payments and to contact their lenders or account-holding institutions to resolve them in a timely manner, as well as to take steps to ensure that their accounts contain enough money to cover the payments, when taking such steps is feasible for consumers. Proposed § 1041.15 also provides for a notice that lenders would be required to provide to consumers, alerting them to the fact that two consecutive payment withdrawal attempts to their accounts have failed—thus triggering operation of the requirements in proposed § 1041.14(b)—so that consumers can better understand their repayment options and obligations in light of their accounts' severely distressed conditions. The two payments-related sections in the proposed rule thus complement and reinforce each other.

Specifically, proposed § 1041.14 would include four main sets of provisions. First, proposed § 1041.14(a) would establish definitions used throughout §§ 1041.14 and 1041.15. Second, proposed § 1041.14(b) would establish requirements for determining when the prohibition on making further attempts to withdraw payment from a consumer's account applies. Third, proposed § 1041.14(c) would set forth the requirements for the first of two exceptions to the prohibition in § 1041.14(b). Under this exception, a lender would be permitted to make further payment withdrawals from a consumer's account if the lender obtains the consumer's new and specific authorization for the terms of the withdrawals, as specified in the proposed rule. Last, proposed § 1041.14(d) would set forth the requirements for a second exception to the prohibition. Under this exception, a lender would be permitted to make further payment withdrawals on a one-time basis within one business day after the consumer authorizes the withdrawal, subject to certain requirements and conditions. Each of these provisions of proposed § 1041.14 is discussed in detail, below.

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[834] The Bureau believes that even when lenders have a contractual right to withdraw a series of payments on an installment loan, lenders still take unreasonable advantage when they attempt to withdraw payment after two consecutive failed attempts. As noted above, the Bureau's analysis of ACH payment withdrawal attempts made by online payday and payday installment lenders indicates that after two failed presentments, even payment withdrawal attempts timed to the consumer's next payday, which is likely to be the date of the next scheduled payment on an installment loan, are likely to fail.

[835] In addition, as discussed in Market Concerns—Payments, the Bureau is aware of some depository institutions that have charged NSF fees and overdraft fees for payment attempts made within the institutions' internal systems, including a depository institution that charged such fees in connection with collecting payments on its small dollar loan product.

14(a) Definitions

Proposed § 1041.14(a) would establish defined terms used throughout §§ 1041.14 and 1041.15. The central defined term in both of these proposed sections is "payment transfer." This term would apply broadly to any lender-initiated attempt to collect payment from a consumer's account, regardless of the type of authorization or instrument used. As discussed more fully below, the Bureau believes a single, broadly-applicable term would help to ensure uniform application of the payments-related consumer protections and reduce complexity in the proposed rule. All of the proposed definitions in § 1041.14(a) are discussed in detail, below.

14(a)(1) Payment Transfer

Proposed § 1041.14(a)(1) would define a payment transfer as any lender-initiated debit or withdrawal of funds from a consumer's account for the purpose of collecting any amount due or purported to be due in connection with a covered loan. To illustrate the definition's application to existing payment methods, proposed § 1041.14(a)(1) further provides a non-exhaustive list of specific means of debiting or withdrawing funds from a consumer's account that would constitute payment transfers if the general definition's conditions are met. Specifically, proposed § 1041.14(a)(1)(i) through (v) provide that the term includes a debit or withdrawal initiated through: (1) An electronic fund transfer, including a preauthorized electronic fund transfer as defined in Regulation E, 12 CFR 1005.2(k); (2) a signature check, regardless of whether the transaction is processed through the check network or another network, such as the ACH network; (3) a remotely created check as defined in Regulation CC, 12 CFR 229.2(fff); and (4) a remotely created payment order as defined in 16 CFR 310.2(cc); and (5) an account-holding institution's transfer of funds from a consumer's account that is held at the same institution.

The Bureau believes that a broad payment transfer definition that focuses on the collection purpose of the debit or withdrawal, rather than on the particular method by which the debit or withdrawal is made, would help to ensure uniform application of the proposed rule's payments-related consumer protections. As discussed in Market Concerns—Payments, in markets for loans that would be covered under the proposed rule, lenders use a variety of methods to collect payment from consumers' accounts. Some lenders take more than one form of payment authorization from consumers in connection with a single loan. Even lenders that take only a signature check often process the checks through the ACH system, particularly for purposes of re-submitting a returned check that was originally processed through the check system.

In addition, the Bureau believes that, for a proposed rule designed to apply across multiple payment methods and channels, a single defined term is necessary to avoid the considerable complexity that would result if the proposed rule merely adopted existing terminology for every specific method and channel. Defining payment transfer in this way would enable the proposed rule to provide for the required payment notices in proposed § 1041.15 to be given to consumers regardless of the payment method or channel used to make a debit or withdrawal. Similarly, this proposed definition ensures that the prohibition in proposed § 1041.14(b) on additional failed payment transfers would apply regardless of the payment method or channel used to make the triggering failed attempts and regardless of whether a lender moves back and forth between different payment methods or channels when attempting to withdraw payment from a consumer's account.

Proposed comment 14(a)(1)-1 explains that a transfer of funds meeting the general definition is a payment transfer regardless of whether it is initiated by an instrument, order, or means not specified in § 1041.14(a)(1). Proposed comment 14(a)(1)-2 explains that a lender-initiated debit or withdrawal includes a debit or withdrawal initiated by the lender's agent, such as a payment processor. Proposed comment 14(a)(1)-3 provides examples to illustrate how the proposed definition applies to a debit or withdrawal for any amount due in connection with a covered loan. Specifically, proposed comments 14(a)(1)-3.i through -3.iv explain, respectively, that the definition applies to a payment transfer for the amount of a scheduled payment, a transfer for an amount smaller than the amount of a scheduled payment, a transfer for the amount of the entire unpaid loan balance collected pursuant to an acceleration clause in a loan agreement for a covered loan, and a transfer for the amount of a late fee or other penalty assessed pursuant to a loan agreement for a covered loan.

Proposed comment 14(a)(1)-4 clarifies that the proposed definition applies even when the transfer is for an amount that the consumer disputes or does not legally owe. Proposed comment 14(a)(1)-5 provides three examples of covered loan payments that, while made with funds transferred or withdrawn from a consumer's account, would not be covered by the proposed definition of a payment transfer. The first two examples, provided in proposed comments 14(a)(1)-5.i and -5.ii, are of transfers or withdrawals that are initiated by the consumer—specifically, when a consumer makes a payment in cash withdrawn by the consumer from the consumer's account and when a consumer makes a payment via an online or mobile bill payment service offered by the consumer's account-holding institution. The third example, provided in proposed comment 14(a)(1)-5.iii, clarifies that the definition does not apply when a lender seeks repayment of a covered loan pursuant to a valid court order authorizing the lender to garnish a consumer's account.[836]

Additionally, proposed comments relating to § 1041.14(a)(1)(i), (ii), and (v) clarify how the proposed payment transfer definition applies to particular payment methods. Specifically, proposed comment 14(a)(1)(i)-1 explains that the general definition of a payment transfer would apply to any electronic fund transfer, including but not limited to an electronic fund transfer initiated by a debit card or a prepaid card. Proposed comment 14(a)(1)(ii)-1 provides an illustration of how the definition of payment transfer would apply to a debit or withdrawal made by signature check, regardless of the payment network through which the transaction is processed. Last, proposed comment 14(a)(1)(v)-1 clarifies, by providing an example, that an account-holding institution initiates a payment transfer when it initiates an internal transfer of funds from a consumer's account to collect payment on a depository advance product.

The Bureau seeks comment on all aspects of the proposed definition of a payment transfer. In particular, the Bureau seeks comment on whether the scope of the definition is appropriate and whether the use of a single defined term in the manner proposed would achieve the objectives discussed above. In addition, the Bureau seeks comment on whether the rule should provide additional examples of methods for debiting or withdrawing funds from consumers' accounts to which the definition applies and, if so, what types of examples. Further, the Bureau recognizes that the proposed definition could apply to instances when a lender that is the consumer's account-holding institution exercises a right of set-off in connection with a covered loan—if, for example, in exercising that right, the lender initiates an internal transfer from the consumer's account. The Bureau seeks comment on the extent to which the proposed definition would apply to exercising a right of set-off, on whether and why the definition should apply to such instances, and on what additional provisions may be needed to clarify the definition's application in this context.

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[836] The Bureau is not intending to address concerns about account or wage garnishment in markets for proposed covered loans in this rulemaking; however, the Bureau is seeking comment on such concerns in the Accompanying RFI published concurrently with this proposal.

14(a)(2) Single Immediate Payment Transfer at the Consumer's Request

Proposed § 1041.14(a)(2) would set forth the definition of a single immediate payment transfer at the consumer's request as, generally, a payment transfer that is initiated by a one-time electronic fund transfer or by processing a consumer's signature check within one business day after the lender obtains the consumer's authorization or check. Such payment transfers would be exempted from certain requirements in the proposed rule, as discussed further below.

The principal characteristic of a single immediate payment transfer at the consumer's request is that it is initiated at or near the time that the consumer chooses to authorize it. During the SBREFA process and in outreach with industry in developing the proposal, the Bureau received feedback that consumers often authorize or request lenders to make an immediate debit or withdrawal from their accounts for various reasons, including, for example, to avoid a late payment fee. As discussed in the section-by-section analysis of proposed § 1041.15, stakeholders expressed concerns primarily about the potential impracticability and undue burden of providing a notice of an upcoming withdrawal under proposed § 1041.15(b) in advance of executing the consumer's payment instructions in these circumstances. More generally, the SERs and industry stakeholders also suggested that a transfer made at the consumer's immediate request presents fewer consumer protection concerns than a debit or withdrawal authorized by the consumer days or more in advance, given that the consumer presumably makes the request based on firsthand knowledge of his or her account balance.

The Bureau believes that applying fewer requirements to payment transfers initiated immediately after consumers request the debit or withdrawal is both warranted and consistent with the important policy goal of providing consumers greater control over their payments on covered loans. Accordingly, the proposed definition would be used to apply certain exceptions to the proposed rule's payments-related requirements in two instances. First, a lender would not be required to provide the payment notice in proposed § 1041.15(b) when initiating a single immediate payment transfer at the consumer's request. Second, a lender would be permitted under proposed § 1041.14(d) to initiate a single immediate payment transfer at the consumer's request after the prohibition in proposed § 1041.14(b) on initiating further payment transfers has been triggered, subject to certain requirements and conditions.

The first prong of proposed § 1041.14(a)(2) would provide that a payment transfer is a single immediate payment transfer at the consumer's request when it meets either one of two sets of conditions. The first of these prongs would apply specifically to payment transfers initiated via a one-time electronic fund transfer. Proposed § 1041.14(a)(2)(i) would generally define the term as a one-time electronic fund transfer initiated within one business day after the consumer authorizes the transfer. The Bureau believes that a one-business-day timeframe would allow lenders sufficient time to initiate the transfer, while providing assurance that the account would be debited in accordance with the consumer's timing expectations. Proposed comment 14(a)(2)(i)-1 explains that for purposes of the definition's timing condition, a one-time electronic fund transfer is initiated at the time that the transfer is sent out of the lender's control and that the electronic fund transfer thus is initiated at the time that the lender or its agent sends the payment to be processed by a third party, such as the lender's bank. The proposed comment further provides an illustrative example of this concept.

The second prong of the definition, in proposed § 1041.14(a)(2)(ii), would apply specifically to payment transfers initiated by processing a consumer's signature check. Under this prong, the term would apply when a consumer's signature check is processed through either the check system or the ACH system within one business day after the consumer provides the check to the lender. Proposed comments 14(a)(2)(ii)-1 and -2 explain how the definition's timing condition in proposed § 1041.14(a)(2)(ii) applies to the processing of a signature check. Similar to the concept explained in proposed comment 14(a)(2)(i)-1, proposed comment 14(a)(2)(ii)-1 explains that a signature check is sent out of the lender's control and that the check thus is processed at the time that the lender or its agent sends the check to be processed by a third party, such as the lender's bank. The proposed comment further cross-references comment 14(a)(2)(i)-1 for an illustrative example of how this concept applies in the context of initiating a one-time electronic fund transfer. Proposed comment 14(a)(2)(ii)-2 clarifies that, for purposes of the timing condition in § 1041.14(a)(2)(ii), in cases when a consumer mails a check to the lender, the check is deemed to be provided to the lender on the date it is received.

As with the similar timing condition for a one-time electronic fund transfer in proposed § 1041.14(a)(2)(i), the Bureau believes that these timing conditions would help to ensure that the consumer has the ability to control the terms of the transfer and that the conditions would be practicable for lenders to meet. In addition, the Bureau notes that the timing conditions would effectively exclude from the definition the use of a consumer's post-dated check, and instead would limit the definition to situations in which a consumer provides a check with the intent that it be used to execute an immediate payment. The Bureau believes that this condition is necessary to ensure that the exceptions concerning single immediate payment transfers at the consumer's request apply only when it is clear that the consumer is affirmatively initiating the payment by dictating its timing and amount. These criteria are not met when the lender already holds the consumer's post-dated check. The Bureau seeks comment on all aspects of the proposed definition of single immediate payment transfer at the consumer's request. In particular, the Bureau seeks comment on whether it would be practicable for lenders to initiate an electronic fund transfer or deposit a check within the proposed 24-hour timeframe. In addition, the Bureau seeks comment on whether the definition should include single immediate payment transfers initiated through other means of withdrawing payment and, if so, which means and why.

14(b) Prohibition on Initiating Payment Transfers From a Consumer's Account After Two Consecutive Failed Payment Transfers

Proposed § 1041.14(b) would prohibit a lender from attempting to withdraw payment from a consumer's account in connection with a covered loan when two consecutive attempts have been returned due to a lack of sufficient funds. The Bureau is proposing § 1041.14(b) pursuant to section 1031(b) of the Dodd-Frank Act, which provides that ''the Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices.'' The Bureau's rules under section 1031(b) may include requirements for the purpose of preventing unfair, deceptive, or abusive acts or practices. As discussed in the section-by-section analysis of proposed § 1041.13, it appears that, in connection with a covered loan, it is an unfair and abusive practice for a lender to attempt to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account fails due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further payment withdrawals. This proposed finding would apply to any lender-initiated debit or withdrawal from a consumer's account for purposes of collecting any amount due or purported to be due in connection with a covered loan, regardless of the particular payment method or channel used.

In accordance with this proposed finding, a lender would be generally prohibited under proposed § 1041.14(b) from making further attempts to withdraw payment from a consumer's account upon the second consecutive return for nonsufficient funds, unless and until the lender obtains the consumer's authorization for additional transfers under proposed § 1041.14(c) or obtains the consumer's authorization for a single immediate payment transfer in accordance with proposed § 1041.14(d). The prohibition under proposed § 1041.14(b) would apply to, and be triggered by, any lender-initiated attempts to withdraw payment from a consumer's checking, savings, or prepaid account. In addition, the prohibition under proposed § 1041.14(b) would apply to, and be triggered by, all lender-initiated withdrawal attempts regardless of the payment method used, including but not limited to signature check, remotely created check, remotely created payment orders, authorizations for one-time or recurring electronic fund transfers, and an account-holding institution's withdrawal of funds from a consumer's account that is held at the same institution.

In developing the proposed approach to restricting lenders from making repeated failed attempts to debit or withdraw funds from consumers' accounts, the Bureau has considered a number of potential interventions. As detailed in Market Concerns—Payments, for example, the Bureau is aware that some lenders split the amount of a payment into two or more separate transfers and then present all of the transfers through the ACH system on the same day. Some lenders make multiple attempts to debit accounts over the course of several days or a few weeks. Also, lenders that collect payment by signature check often alternate submissions between the check system and ACH system to maximize the number of times they can attempt to withdraw payment from a consumer's account using a single check. These and similarly aggressive payment practices potentially cause harms to consumers and may each constitute an unfair, deceptive, or abusive act or practice. The Bureau believes, however, that tailoring requirements in this rulemaking for each discrete payment practice would add considerable complexity to the proposed rule and yet still could leave consumers vulnerable to harms from aggressive practices that may emerge in markets for covered loans in the future.

Accordingly, while the Bureau will continue to use its supervisory and enforcement authorities to address such aggressive practices as appropriate, the Bureau is proposing in this rulemaking to address a specific practice that the Bureau preliminarily believes to be unfair and abusive, and is proposing requirements to prevent that practice which will provide significant consumer protections from a range of harmful payment practices in a considerably less complex fashion. For example, as applied to the practice of splitting payments into multiple same-day presentments, the proposed approach would effectively curtail a lender's access to the consumer's account when any two such presentments fail. For another example, as applied to checks, a lender could resubmit a returned check no more than once, regardless of the channel used, before triggering the prohibition.

The Bureau seeks comment on all aspects of the proposed approach to restricting lenders from making repeated failed attempts to withdraw payment from consumers' accounts. In particular, the Bureau seeks comment on whether the proposed approach is an appropriate and effective way to prevent consumer harms from the aggressive payment practices described above. Further, the Bureau seeks comment on whether there are potentially harmful payment practices in markets for covered loans that would not be addressed by the proposed approach and, if so, what additional provisions may be needed to address those practices.

The Bureau has framed the proposed prohibition broadly so that it would apply to depository lenders that hold the consumer's asset account, such as providers of deposit advance products or other types of proposed covered loans that may be offered by such depository lenders. Because depository lenders that hold consumers' accounts have greater information about the status of those accounts than do third-party lenders, the Bureau believes that depository lenders should have little difficulty in avoiding failed attempts that would trigger the prohibition. Nevertheless, if such lenders elect to initiate payment transfers from consumers' accounts when—as the lenders know or should know—the accounts lack sufficient funds to cover the amount of the payment transfers, they could assess the consumers substantial fees permitted under the asset account agreement (including NSF and overdraft fees) as well as any late fees or similar penalty fees permitted under the loan agreement for the covered loan. Accordingly, the Bureau believes that applying the prohibition in this manner may help to protect consumers from harmful practices in which such depository lenders may sometimes engage. As discussed in Market Concerns—Payments, for example, the Bureau found that a depository institution that offered loan products to consumers with accounts at the institution charged some of those consumers NSF fees and overdraft fees for payment withdrawals initiated within the institution's internal systems.

The Bureau seeks comment on whether depository institutions' greater visibility into consumers' accounts warrants modifying the proposed approach for applying the prohibition to such lenders. In particular, the Bureau seeks comment on whether and how frequently such lenders make repeated payment withdrawal attempts through their internal systems in connection with proposed covered loans in ways that can be harmful to consumers and, if so, whether the proposed approach is appropriate to address those practices, or whether (and what types of) modified approaches are appropriate. For example, the Bureau seeks comment on whether triggering the proposed prohibition upon the failure of a second consecutive failed payment transfer attempt should be modified for such lenders in light of the fact that depository institutions are better situated to predict the outcomes of their attempts than are lenders that do not hold consumers' accounts.

Proposed comment 14(b)-1 explains the general scope of the prohibition. Specifically, it explains that a lender is restricted under the prohibition from initiating any further payment transfers from the consumer's account in connection with the covered loan, unless the requirements and conditions in either § 1041.14(c) or (d) are satisfied. (Proposed § 1041.14(c) and (d), which would permit a lender to initiate payment transfers authorized by the consumer after the prohibition has applied if certain requirements and conditions are satisfied, are discussed in detail below.) To clarify the ongoing application of the prohibition, proposed comment 14(b)-1 further explains, by way of example, that a lender is restricted from initiating transfers to collect payments that later fall due or to collect late fees or returned item fees. The Bureau believes it is important to clarify that the proposed restriction on further transfers, in contrast to restrictions in existing laws and rules (such as the NACHA cap on re-presentments), would not merely limit the number of times a lender can attempt to collect a single failed payment. Last, proposed comment 14(b)-1 explains that the prohibition applies regardless of whether the lender holds an authorization or instrument from the consumer that is otherwise valid under applicable law, such as an authorization to collect payments via preauthorized electronic fund transfers under Regulation E or a post-dated check.

Proposed comment 14(b)-2 clarifies that when the prohibition is triggered, the lender is not prohibited under the rule from initiating a payment transfer in connection with a bona fide subsequent covered loan made to the consumer, provided that the lender has not attempted to initiate two consecutive failed payment transfers in connection with the bona fide subsequent covered loan. The Bureau believes that limiting the restriction in this manner may be appropriate to assure that a consumer who has benefitted from the restriction at one time is not effectively foreclosed from taking out a covered loan with the lender in the future, after her financial situation has improved.

The Bureau seeks comment on what additional provisions may be appropriate to clarify the concept of a bona fide subsequent covered loan, including provisions clarifying how the concept applies in the context of a refinancing. In addition, the Bureau seeks comment on what additional provisions may be appropriate to clarify how the proposed prohibition on further payment transfers applies when a consumer has more than one outstanding loan with a lender, including to situations in which a lender makes two failed payment transfer attempts when alternating between covered loans.

14(b)(1) General

Proposed § 1041.14(b)(1) would provide specifically that a lender must not initiate a payment transfer from a consumer's account in connection with a covered loan after the lender has attempted to initiate two consecutive failed payment transfers from the consumer's account in connection with that covered loan. A payment transfer would be defined in § 1041.14(a)(1), as discussed above. Proposed § 1041.14(b)(1) would further specify that a payment transfer is deemed to have failed when it results in a return indicating that the account lacks sufficient funds or, for a lender that is the consumer's account-holding institution, it results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds. The specific provision for an account-holding institution thus would apply when such a lender elects to initiate a payment transfer that results in the collection of either no funds or a partial payment.

Proposed comments 14(b)(1)-1 through -4 provide clarification on when a payment transfer is deemed to have failed. Specifically, proposed comment 14(b)(1)-1 explains that for purposes of the prohibition, a failed payment transfer includes but is not limited to debit or withdrawal that is returned unpaid or is declined due to nonsufficient funds in the consumer's account. This proposed comment clarifies, among other things, that the prohibition applies to declined debit card transactions. Proposed comment 14(b)(1)-2 clarifies that the prohibition applies as of the date on which the lender or its agent, such as a payment processor, receives the return of the second consecutive failed transfer or, if the lender is the consumer's account-holding institution, the date on which the transfer is initiated. The Bureau believes that a lender that is the consumer's account-holding institution, in contrast to other lenders, has or should have the ability to know before a transfer is even initiated (or immediately thereafter, at the latest) that the account lacks sufficient funds. Proposed comment 14(b)(1)-3 clarifies that a transfer that results in a return for a reason other than a lack of sufficient funds is not a failed transfer for purposes of the prohibition and provides, as an example, a transfer that is returned due to an incorrectly entered account number. Last, proposed comment 14(b)(1)-4 clarifies how the concept of a failed payment transfer applies to a transfer initiated by a lender that is the consumer's account-holding institution. Specifically, the proposed comment explains that when a lender that is the consumer's account-holding institution initiates a payment transfer that results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds, the payment transfer is a failed payment transfer for purposes of the prohibition, regardless of whether the result is classified or coded in the lender's internal procedures, processes, or systems as a return for nonsufficient funds. The Bureau believes that, unlike other lenders, such a lender has or should have the ability to know the result of a payment transfer and the reason for that result without having to rely on a "return," classified as such, or on a commonly understood reason code. Proposed comment 14(b)(1)-4 further clarifies that a lender that is the consumer's account-holding institution does not initiate a failed payment transfer if the lender merely defers or forgoes debiting or withdrawing payment from an account based on the lender's observation that the account lacks sufficient funds. For such lenders, the Bureau believes it is important to clarify that the concept of a failed payment transfer incorporates the proposed payment transfer definition's central concept that the lender must engage in the affirmative act of initiating a debit or withdrawal from the consumer's account in order for the term to apply.

The Bureau seeks comment on all aspects of the proposed provisions relating to when a payment transfer is deemed to have failed. In particular, the Bureau seeks comment on whether the provisions appropriately address situations in which lenders that are the consumers' account-holding institutions initiate payment transfers that result in nonpayment or partial payment, or whether additional provisions may be appropriate, and, if so, what types of provisions. In addition, the Bureau seeks comment on whether such lenders assess account-related fees (that is, fees other than bona fide late fees under the loan agreement) even when they defer or forego collecting payment based on their observation that the account lacks sufficient funds, and, if so, what types of fees and how frequently such fees are assessed, and what additional provisions may be appropriate to clarify how the concept of a failed payment transfer applies in such circumstances. Further, the Bureau seeks comment on whether such lenders assess overdraft fees when their attempts to withdraw payment in connection with proposed covered loans result in the collection of the full payment amount and, if so, how frequently and what additional provisions may be appropriate to apply the concept of a failed payment transfer to such circumstances.

During the SBREFA process and in outreach with industry in developing the proposal, some lenders recommended that the Bureau take a narrower approach in connection with payment attempts by debit cards. One such recommendation suggested that the prohibition against additional withdrawal attempts should not apply when neither the lender nor the consumer's account-holding institution charges an NSF fee in connection with a second failed payment attempt involving a declined debit card transaction. The Bureau understands that depository institutions generally do not charge consumers NSF fees or declined authorization fees for declined debit card transactions, although the Bureau is aware that such fees are charged by some issuers of prepaid cards. The Bureau thus recognizes that debit card transactions present somewhat less risk of harm to consumers. For a number of reasons, however, the Bureau does not believe that this potential effect is sufficient to propose excluding such transactions from the rule. First, the recommended approach does not protect consumers from the risk of incurring an overdraft fee in connection with the lender's third withdrawal attempt. As discussed in Market Concerns—Payments, the Bureau's research focusing on online lenders' attempts to collect covered loan payments through the ACH system indicates that, in the small fraction of cases in which a lender's third attempt succeeds—*i.e.,* the attempt made after the lender has sufficient information indicating that the account is severely distressed—up to one-third are paid out of overdraft coverage. Second, the Bureau believes that the recommended approach would be impracticable to comply with and enforce, given that the lender initiating a payment transfer would not necessarily know the receiving account-holding institution's practice with respect to charging fees on declined or returned transactions. Additionally, the Bureau is concerned that lenders might respond to such an approach by re-characterizing their fees in some other manner. Accordingly, the Bureau believes that it is not appropriate to propose carving out of the rule payment withdrawal attempts by debit cards or prepaid cards, given the narrow circumstances in which the carve-out would apply, administrative challenges, and residual risk to consumers.

The Bureau seeks comment on this proposed approach and on whether payment withdrawal attempts by debit cards or prepaid cards pose other consumer protection concerns. In addition, the Bureau seeks comment on whether and, if so, what types of specific modified approaches to the restriction on payment transfer attempts in § 1041.14(b) may be appropriate to address consumer harms from repeated payment withdrawal attempts made by debit cards or prepaid cards.

In addition to the feedback discussed above, during the SBREFA process the Bureau received two other recommendations in connection with the proposed restrictions on payment withdrawal attempts. One SER suggested that the Bureau delay imposing any restrictions until the full effects of NACHA's recently imposed 15 percent return rate threshold rule can be observed. As discussed in Markets Background—Payments, that rule, which went into effect in 2015, can trigger inquiry and review by NACHA if a merchant's overall return rate for debits made through the ACH network exceeds 15 percent. The Bureau considered the suggestion carefully but does not believe that a delay would be warranted. As noted, the NACHA rule applies only to returned debits through the ACH network. Thus, it places no restrictions on lenders' attempts to withdraw payment through other channels. In fact, as discussed above, anecdotal evidence suggests that lenders are already shifting to withdrawing payments through other channels to avoid the NACHA rule's restrictions. Further, exceeding the threshold merely triggers closer scrutiny by NACHA. To the extent that lenders that make proposed covered loans become subject to the review process, the Bureau believes that they may be able to justify higher return rates by arguing that their rates are consistent with the rates for their market as a whole. However, the Bureau seeks comment on the effects of the NACHA rule on lender practices in submitting payment withdrawal attempts in connection with proposed covered loans through the ACH system and on return rates in that system with respect to such loans.

Another SER recommended that lenders should be permitted to make up to four payment collection attempts per month when a loan is in default. As discussed in Market Concerns—Payments, the Bureau's evidence indicates that for the proposed covered loans studied, after a second consecutive attempt to collect payment fails, the third and subsequent attempts are very likely to fail. The Bureau therefore believes that two consecutive failed payment attempts, rather than four presentment attempts per month, is the appropriate point at which to trigger the rule's payment protections. In addition, the Bureau believes that in many cases in which the proposed prohibition would apply, the consumer may technically be in default on the loan, given that the lender's payment attempts will have been unsuccessful. Thus, the suggestion to permit a large number of payment withdrawal attempts when a loan is in default could effectively swallow the rule being proposed.

14(b)(2) Consecutive Failed Payment Transfers

Proposed § 1041.14(b)(2) would define a first failed payment transfer and a second consecutive failed payment transfer for purposes determining when the prohibition in proposed § 1041.14(b) applies. Each of these proposed definitions is discussed in detail directly below.

14(b)(2)(i) First Failed Payment Transfers

Proposed § 1041.14(b)(2)(i) would provide that a failed transfer is the first failed transfer if it meets any of three conditions. First, proposed § 1041.14(b)(2)(i)(A) would provide that a transfer is the first failed payment transfer if the lender has initiated no other transfer from the consumer's account in connection with the covered loan. This applies to the scenario in which a lender's very first attempt to collect payment on a covered loan fails. Second, proposed § 1041.14(b)(2)(i)(B) would provide that, generally, a failed payment transfer is a first failed payment transfer if the immediately preceding payment transfer was successful, regardless of whether the lender has previously initiated a first failed payment transfer. This proposed provision sets forth the general principle that any failed payment transfer that follows a successful payment transfer is the first failed payment transfer for the purposes of the prohibition in proposed § 1041.14(b). Put another way, an intervening successful payment transfer generally has the effect of resetting the failed payment transfer count to zero. Last, proposed § 1041.14(b)(2)(i)(C) would provide that a payment transfer is a first failed payment transfer if it is the first failed attempt after the lender obtains the consumer's authorization for additional payment transfers pursuant to § 1041.14(c). As discussed in detail below, once the proposed prohibition on future transfers applies, a lender would be permitted under proposed § 1041.14(c) to authorize additional payment transfers authorized by the consumer in accordance with certain requirements and conditions.

Proposed comment 14(b)(2)(i)-1 provides two illustrative examples of a first failed payment transfer.

14(b)(2)(ii) Second Consecutive Failed Payment Transfer

Proposed § 1041.14(b)(2)(ii) would provide that a failed payment transfer is the second consecutive failed payment transfer if the previous payment transfer was a first failed transfer, and would define the concept of a previous payment transfer to include a payment transfer initiated at the same time or on the same day as the failed payment transfer. Proposed comment 14(b)(2)(ii)-1 provides an illustrative example of the general concept of a second consecutive failed payment transfer, while proposed comment 14(b)(2)(ii)-2 provides an illustrative example of a previous payment transfer initiated at the same time and on the same day. Given the high failure rates for same-day presentments discussed in Market Concerns—Payments, the Bureau believes it is important to clarify that the prohibition is triggered when two payment transfers initiated on the same day, including concurrently, fail. The Bureau seeks comment on what additional provisions may be appropriate to clarify how the prohibition applies when a lender initiates multiple payment transfers on the same day or concurrently and two of those payment transfers fail. In particular, the Bureau seeks comment on what provisions may be appropriate to address situations in which a lender elects to initiate more than two payment transfers so close together in time that the lender may not receive the two returns indicating that the prohibition has been triggered prior to initiating further payment transfers.

In addition to the comments discussed above, proposed comment 14(b)(2)(ii)-3 clarifies that when a lender initiates a single immediate payment transfer at the consumer's request pursuant to the exception in § 1041.14(d), the failed transfer count remains at two, regardless of whether the transfer succeeds or fails. Thus, as the proposed comment further provides, the exception is limited to the single transfer authorized by the consumer, and, accordingly, if a payment transfer initiated pursuant to the exception fails, the lender would not be permitted to re-initiate the transfer, such as by re-presenting it through the ACH system, unless the lender obtains a new authorization under § 1041.14(c) or (d). The Bureau believes this limitation is necessary, given that the authorization for an immediate transfer is based on the consumer's understanding of her account's condition only at that specific moment in time, as opposed to its condition in the future.

In addition to the requests for comment above, the Bureau seeks comment on all aspects of the proposed provisions for determining when a failed payment transfer is the second consecutive failed payment transfer for purposes of the prohibition in § 1041.14(b). In particular, the Bureau seeks comment on whether the rule should include provisions to address situations in which lenders, after a first failed payment transfer, initiate a payment transfer or series of payment transfers for a substantially smaller amount. As discussed in the section-by-section analysis of proposed § 1041.19, the proposed rule includes an illustrative example of how, given certain facts and circumstances, initiating a payment transfer for only a nominal amount after a first failed payment transfer—thereby resetting the failed payment transfer count—could constitute an evasion of the prohibition on further payment transfers in proposed § 1041.14(b). In addition to this proposed anti-evasion example, the Bureau seeks comment on whether the rule should specifically provide that, after a first failed payment transfer, initiating a successful payment transfer or series of payment transfers for a substantially smaller amount (but larger than a nominal amount) tolls the failed payment transfer count at one, rather than resetting it to zero, given that such an amount may not sufficiently indicate that the consumer's account is no longer in distress. If so, the Bureau also seeks comment on what amount may be appropriate for a substantially smaller amount, such as any amount up to 10 percent of the first failed payment transfer's amount, or whether a higher amount threshold up to 25 percent or more is needed to indicate to the lender that the account is no longer distressed.

14(b)(2)(iii) Different Payment Channel

Proposed § 1041.14(b)(2)(iii) would establish the principle that alternating between payment channels does not reset the failed payment transfer count. Specifically, it would provide that a failed payment transfer meeting the conditions in proposed § 1041.14(b)(2)(ii) is the second consecutive failed transfer regardless of whether the first failed transfer was initiated through a different payment channel. Proposed comment 14(b)(2)(iii)-1 would provide an illustrative example of this concept.

14(c) Exception for Additional Payment Transfers Authorized by the Consumer

As discussed above, proposed § 1041.13 would provide that, in connection with a covered loan, it is an unfair and abusive practice for a lender to attempt to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further payment withdrawals from the account. Whereas proposed § 1041.14(b) would establish the prohibition on further payment withdrawals, proposed § 1041.14(c) and (d) would establish requirements for obtaining the consumer's new and specific authorization to make further payment withdrawals. Proposed § 1041.14(c) would be framed as an exception to the prohibition, even though payment withdrawals made pursuant to its requirements would not fall within the scope of the unfair and abusive practice preliminarily identified in proposed § 1041.13. (Proposed § 1041.14(d), discussed in detail below, would establish a second exception for payment withdrawals that would otherwise fall within the scope of the preliminarily identified unfair and abusive practice; that exception would apply when the consumer authorizes, and the lender initiates, a transfer meeting the definition of a single immediate payment transfer at the consumer's request, subject to certain requirements and conditions.)

As noted in the discussion of proposed § 1041.14(b)(2)(i)(C), a new authorization obtained pursuant to proposed § 1041.14(c) would reset to zero the failed payment transfer count under proposed § 1041.14(b), whereas an authorization obtained pursuant to proposed § 1041.14(d) would not. Accordingly, a lender would be permitted under § 1041.14(c) to initiate one or more additional payment transfers that are authorized by the consumer in accordance with certain requirements and conditions, and subject to the general prohibition on initiating a payment transfer after two consecutive failed attempts. Thus, for example, when the prohibition in § 1041.14(b) has been triggered and the lender subsequently obtains under the exception the consumer's authorization to debit the consumer's account on a recurring basis, the lender could rely on that authorization to initiate additional payment transfers in accordance with the terms agreed to by the consumer, until and unless the lender initiates two consecutive failed payment transfers, thereby triggering the prohibition again.

The proposed authorization requirements and conditions in § 1041.14(c) are designed to assure that, before a lender initiates another payment transfer (if any) after triggering the prohibition, the consumer does in fact want the lender to resume making payment transfers and that the consumer understands and agrees to the specific date, amount, and payment channel for those succeeding payment transfers. As discussed in detail in connection with each proposed provision, below, the Bureau believes that requiring that the key terms of each transfer be clearly communicated to the consumer before the consumer decides whether to grant authorization will help to assure that the consumer's decision is an informed one and that the consumer understands the consequences that may flow from granting a new authorization and help the consumer avoid future failed payment transfers. The Bureau believes that, when this assurance is provided, it no longer would be unfair or abusive for a lender to initiate payment transfers that accord with the new authorization, at least until such point that the lender initiates two consecutive failed payment transfers pursuant to the new authorization.

The Bureau recognizes that in some cases, lenders and consumers might want to use an authorization under this exception to resume payment withdrawals according to the same terms and schedule that the consumer authorized prior to the two consecutive failed attempts. In other cases, lenders and consumers may want to establish a new authorization to accommodate a change in the payment schedule—as might be the case, for example, when the consumer enters into a workout agreement with the lender. Accordingly, the proposed exception is designed to be sufficiently flexible to accommodate both circumstances. In either circumstance, however, the lender would be permitted to initiate only those transfers authorized by the consumer under § 1041.14(c).

Proposed § 1041.14(c)(1) would establish the general exception to the prohibition on additional payment transfer attempts under § 1041.14(b), while the remaining subparagraphs would specify particular requirements and conditions. First, proposed § 1041.14(c)(2) would establish the general requirement that for the exception to apply to an additional payment transfer, the transfer's specific date, amount, and payment channel must be authorized by the consumer. In addition, § 1041.14(c)(2) would address the application of the specific date requirement to re-initiating a returned payment transfer and also address authorization of transfers to collect a late fee or returned item fee, if such fees are incurred in the future. Second, proposed § 1041.14(c)(3) would establish procedural and other requirements and conditions for requesting and obtaining the consumer's authorization. Last, proposed § 1041.14(c)(4) would address circumstances in which the new authorization becomes null and void. Each of these sets of requirements and conditions is discussed in detail below.

Proposed comment 14(c)-1 provides a summary of the exception's main provisions and note the availability of the exception in § 1041.14(d).

The Bureau seeks comment on all aspects of the proposed exception in § 1041.14(c).

14(c)(1) General

Proposed § 1041.14(c)(1) would provide that, notwithstanding the prohibition in § 1041.14(b), a lender is permitted to initiate additional payment transfers from a consumer's account after two consecutive transfers by the lender have failed if the transfers are authorized by the consumer in accordance with the requirements and conditions of § 1041.14(c), or if the lender executes a single immediate payment transfer at the consumer's request under § 1041.14(d). Proposed comment 14(c)(1)-1 explains that the consumer's authorization required by § 1041.14(c) is in addition to, and not in lieu of, any underlying payment authorization or instrument required to be obtained from the consumer under applicable laws. The Bureau notes, for example, that an authorization obtained pursuant to proposed § 1041.14(c) would not take the place of an authorization that a lender is required to obtain under applicable laws to collect payments via RCCs, if the lender and consumer wish to resume payment transfers using that method. However, in cases where lenders and consumers wish to resume payment transfers via preauthorized electronic fund transfers as that term is defined in Regulation E, the Bureau believes that, given the high degree of specificity required by proposed § 1041.14(c), lenders could comply with the authorization requirements in Regulation E, 12 CFR 1005.10(b) and the requirements in proposed § 1041.14(c) within a single authorization process. The Bureau seeks comment on whether and, if so, what types of additional provisions may be appropriate to clarify whether and how an authorization obtained pursuant to proposed § 1041.14(c) would satisfy the authorization requirements for preauthorized electronic fund transfers in Regulation E. In addition, the Bureau seeks comment on whether additional provisions may be appropriate to clarify how the authorization requirements in proposed § 1041.14(c) apply in circumstances where the lender and consumer wish to resume payment transfers using a payment method other than preauthorized electronic fund transfers, and, if so, what types of provisions.

14(c)(2) General Authorization Requirements and Conditions

14(c)(2)(i) Required Transfer Terms

Proposed § 1041.14(c)(2)(i) would establish the general requirement that for the exception in proposed § 1041.14(c) to apply to an additional payment transfer, the transfer's specific date, amount, and payment channel must be authorized by the consumer. The Bureau believes that requiring lenders to explain these key terms of each transfer to consumers when seeking authorization will help to ensure that consumers can make an informed decision as between granting authorization for additional payment transfers and other convenient repayment options, such as payments by cash or money order, "push" bill payment services, and single immediate payment transfers authorized pursuant to proposed § 1041.14(d), and thus help consumers avoid future failed payment transfers.

In addition, if a lender wishes to obtain permission to initiate ongoing payment transfers from a consumer whose account has already been subject to two consecutive failed attempts, the Bureau believes it is important to require the lender to obtain the consumer's agreement to the specific terms of each future transfer from the outset, rather than to provide for less specificity upfront and rely instead on the fact that under proposed § 1041.15(b), every consumer with a covered loan will receive notice containing the terms of each upcoming payment transfer. As discussed above, the Bureau believes that, in general, the proposed required notice for all payment transfers would help to reduce harms that may occur from payment transfers by alerting the consumers to the upcoming attempt in sufficient time for them to arrange to make a required payment when they can afford to do so and to make choices that may minimize the attempt's impact on their accounts when the timing of a payment is not aligned with their finances. However, the Bureau believes that consumers whose accounts have already experienced two failed payment withdrawal attempts in succession would have demonstrated a degree of financial distress that makes it unlikely that a notice of another payment attempt would enable them to avoid further harm.

The Bureau seeks comment on all aspects of the proposed exception's core requirement that the date, amount, and payment channel of each additional payment transfer be authorized by the consumer. In particular, the Bureau seeks comment on whether less prescriptive authorization requirements may provide adequate consumer protections and, if so, what types of less prescriptive requirements may be appropriate.

Proposed comment 14(c)(2)(i)-1 explains the general requirement that the terms of each additional payment transfer must be authorized by the consumer. It further clarifies that for the exception to apply to an additional payment transfer, these required terms must be included in the signed authorization that the lender is required to obtain from the consumer under § 1041.14(c)(3)(iii).

Proposed comment 14(c)(2)(i)-2 clarifies that the requirement that the specific date of each additional transfer be expressly authorized is satisfied if the consumer authorizes the month, day, and year of the transfer.

Proposed comment 14(c)(2)(i)-3 clarifies that the exception does not apply if the lender initiates an additional payment transfer for an amount larger than the amount authorized by the consumer, unless it satisfies the requirements and conditions in proposed § 1041.14(c)(2)(iii)(B) for adding the amount of a late fee or returned item fee to an amount authorized by the consumer. (The requirements and conditions in proposed § 1041.14(c)(2)(iii)(B) are discussed in detail, below.)

Proposed comment 14(c)(2)(i)-4 clarifies that a payment transfer initiated pursuant to § 1041.14(c) is initiated for the specific amount authorized by the consumer if its amount is equal to or smaller than the authorized amount. The Bureau recognizes that in certain circumstances it may be necessary for the lender to initiate transfers for a smaller amount than specifically authorized, including, for example, when the lender needs to exclude from the transfer the amount of a partial prepayment. In addition, the Bureau believes that this provision may provide useful flexibility in instances where the prohibition on further payment transfers is triggered at a time when the consumer has not yet fully drawn down on a line of credit. In such instances, lenders and consumers may want to structure the new authorization to accommodate payments on future draws by the consumer. With this provision for smaller amounts, the lender could seek authorization for additional payment transfers for the payment amount that would be due if the consumer has drawn the full amount of remaining credit, and then would be permitted under the exception to initiate the transfers for amounts smaller than the specific amount, if necessary.

The Bureau seeks comment on this provision for smaller amounts. In particular, the Bureau seeks comment on whether this provision inappropriately weakens the consumer protections accorded by the requirement that the specific transfer amount be authorized by the consumer, and, if so, what types of additional protections should be included to ensure greater protections in a manner that addresses the practical considerations noted above. In addition, the Bureau seeks comment on whether the provision sufficiently addresses the specific-amount requirement's application in instances where the consumer has credit available on a line of credit, or whether specific provisions should be included to clarify the requirement's application in these instances and, if so, what types of provisions.

14(c)(2)(ii) Application of Specific Date Requirement to Re-Initiating a Returned Payment Transfer

Proposed § 1041.14(c)(2)(ii) would establish a narrow exception to the general requirement that an additional payment transfer be initiated on the date authorized by the consumer. Specifically, it would provide that when a payment transfer authorized by the consumer pursuant to the exception is returned for nonsufficient funds, the lender is permitted to re-present the transfer on or after the date authorized by the consumer, provided that the returned transfer has not triggered the prohibition on further payment transfers in § 1041.14(b). The Bureau believes that this narrow exception would accommodate practical considerations in payment processing and notes that the prohibition in proposed § 1041.14(b) will protect the consumer if the re-initiation fails.

14(c)(2)(iii) Special Authorization Requirements and Conditions for Payment Transfers to Collect a Late Fee or Returned Item Fee

Proposed § 1041.14(c)(2)(iii) contains two separate provisions that would permit a lender to obtain the consumer's authorization for, and to initiate, additional payment transfers to collect a late fee or returned item fee. Both of these provisions are intended to permit lenders to use a payment authorization obtained pursuant to proposed § 1041.14(c)(2)(iii) to collect a fee that was not anticipated when the authorization was obtained, without having to go through a second authorization process under proposed § 1041.14(c).

First, proposed § 1041.14(c)(2)(iii)(A) would permit a lender to initiate an additional payment transfer solely to collect a late fee or returned item fee without obtaining a new consumer authorization for the specific date and amount of the transfer only if the lender, in the course of obtaining the consumer's authorization for additional payment transfers, has informed the consumer of the fact that individual payment transfers to collect a late fee or returned item fee may be initiated and has obtained the consumer's general authorization for such transfers in advance. Specifically, the lender could initiate such transfers only if the consumer's authorization obtained pursuant to proposed § 1041.14(c) includes a statement, in terms that are clear and readily understandable to the consumer, that the lender may initiate a payment transfer solely to collect a late fee or returned item fee. In addition, the lender would be required to specify in the statement the highest amount for such fees that may be charged, as well as the payment channel to be used. The Bureau believes this required statement may be appropriate to help ensure that the consumer is aware of key information about such transfers—particularly the highest possible amount—when the consumer is deciding whether to grant an authorization.

Proposed comment 14(c)(2)(iii)(A)-1 clarifies that the consumer's authorization for an additional payment transfer solely to collect a late fee or returned item fee need not satisfy the general requirement that the consumer must authorize the specific date and amount of each additional payment transfer. Proposed comment 14(c)(2)(iii)(A)-2 provides, as an example, that the requirement to specify to highest possible amount that may be charged for a fee is satisfied if the required statement specifies the maximum amount permissible under the loan agreement. Proposed comment 14(c)(2)(iii)(A)-3 provides that if a fee may vary due to remaining loan balance or other factors, the lender must assume the factors that result in the highest possible amount in calculating the specified amount.

The second provision, proposed § 1041.14(c)(2)(iii)(B), would permit a lender to add the amount of one late fee or one returned item fee to the specific amounts authorized by the consumer as provided under proposed § 1041.14(c)(2) only if the lender has informed the consumer of the fact that such transfers for combined amounts may be initiated and has obtained the consumer's general authorization for such transfers in advance. Specifically, the lender could initiate transfers for such combined amounts only if the consumer's authorization includes a statement, in terms that are clear and readily understandable to the consumer, that the amount of one late fee or one returned item fee may be added to any payment transfer authorized by the consumer. In addition, the lender would be required to specify in the statement the highest amount for such fees that may be charged, as well as the payment channel to be used. As with the similar requirement in proposed § 1041.14(c)(iii)(A), the Bureau believes this required statement may be appropriate to ensure that the consumer is aware of key information about such transfers—particularly the highest possible amount—when the consumer is deciding whether to grant an authorization.

Proposed comment 14(c)(2)(iii)(B)-1 clarifies that the exception in § 1041.14(c) does not apply to an additional payment transfer that includes the additional amount of a late fee or returned item fee unless the consumer authorizes the transfer in accordance with the requirements and conditions in § 1041.14(c)(2)(iii)(B). Proposed comment 14(c)(2)(iii)(B)-2 cross-references comments 14(c)(2)(iii)(A)-2 and -3 for guidance on how to satisfy the requirement to specify the highest possible amount of a fee.

The Bureau seeks comment all aspects of these proposed provisions for additional payment transfers to collect unanticipated late fees and returned item fees. In particular, the Bureau seeks comment on whether the requirements provide adequate protections from consumer harms that may result from such additional payment transfers. In addition, the Bureau seeks comment on whether including model statements in the rule would facilitate compliance and more effective disclosure of the required information.

14(c)(3) Requirements and Conditions for Obtaining the Consumer's Authorization

14(c)(3)(i) General

Proposed § 1041.14(c)(3) would establish a three-step process for obtaining a consumer's authorization for additional payment transfers. First, proposed § 1041.14(c)(3)(ii) would contain provisions for requesting the consumer's authorization. The permissible methods for requesting authorization would allow lenders considerable flexibility. For example, lenders would be permitted to provide the transfer terms to the consumer in writing or (subject to certain requirements and conditions) electronically without regard to the consumer consent and other provisions of the E-Sign Act. In addition, lenders would be permitted to request authorization orally by telephone, subject to certain requirements and conditions. In the second step, proposed § 1041.14(c)(3)(iii) would provide that, for an authorization to be valid under the exception, the lender must obtain an authorization that is signed or otherwise agreed to by the consumer and that includes the required terms for each additional payment transfer. The lender would be permitted to obtain the consumer's signature in writing or electronically, provided the E-Sign Act requirements for electronic records and signatures are met. This is intended to facilitate requesting and obtaining the consumer's signed authorization in the same communication. In the third and final step, proposed § 1041.14(c)(3)(iii) also would require the lender to provide to the consumer memorialization of the authorization no later than the date on which the first transfer authorized by the consumer is initiated. The lender would be permitted to provide the memorialization in writing or electronically, without regard to the consumer consent and other provisions of the E-Sign Act, provided it is in a retainable form. Each of these three provisions for obtaining the consumer's authorization is discussed in detail, below.

In developing this three-step approach, the Bureau is endeavoring to ensure that the precise terms of the additional transfers for which a lender seeks authorization are effectively communicated to the consumer during each step of the process and that the consumer has the ability to decline authorizing any payment transfers with terms that the consumer believes are likely to cause challenges in managing her account. In addition, the Bureau designed the approach to be compatible with lenders' existing systems and procedures for obtaining other types of payment authorizations, particularly authorizations for preauthorized, or "recurring," electronic fund transfers under Regulation E. Accordingly, the proposed procedures generally are designed to mirror existing requirements in Regulation E, 12 CFR 1005.10(b). Regulation E requires that preauthorized electronic fund transfers from a consumer's account be authorized "only by a writing signed or similarly authenticated by the consumer."[837] Under EFTA and Regulation E, companies can obtain the required consumer authorizations for preauthorized electronic fund transfers in several ways. Consumer authorizations can be provided in paper form or electronically. The commentary to Regulation E explains that the rule "permits signed, written authorizations to be provided electronically," and specifies that the "writing and signature requirements . . . are satisfied by complying with the [E-Sign Act] which defines electronic records and electronic signatures."[838] Regulation E does not prohibit companies from obtaining signed, written authorizations from consumers over the phone if the E-Sign Act requirements for electronic records and signatures are met.[839] In addition,

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[837] *See* 12 CFR 1005.10(b).

[838] 12 CFR part 1005, Supp. I, comment 10(b)-5. The E-Sign Act establishes that electronic signatures and electronic records are valid and enforceable if they meet certain criteria. *See* 15 U.S.C. 7001(a)(1). An electronic signature is "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." 15 U.S.C. 7006(5). An electronic record is "a contract or other record created, generated, sent, communicated, received, or stored by electronic means." *Id.* 7006(4).

[839] In 2006, the Board explained that if certain types of tape-recorded authorizations constituted a written and signed (or similarly authenticated) authorization under the E-Sign Act, then the authorization would satisfy Regulation E requirements as well. 71 FR 1638, 1650 (Jan. 10, 2006).

Regulation E requires persons that obtain authorizations for preauthorized electronic fund transfers to provide a copy of the terms of the authorization to the consumer.[840] The copy of the terms of the authorization must be provided in paper form or electronically.[841] The Bureau understands that this requirement in Regulation E, 12 CFR 1005.10(b) is not satisfied by providing the consumer with a recording of a telephone call.

During the SBREFA process, a small entity representative recommended that the procedures for obtaining consumers' re-authorization after lenders trigger the proposed cap on failed presentments should be similar to existing procedures for obtaining consumers' authorizations to collect payment by preauthorized electronic fund transfers under Regulation E. The Bureau believes that harmonizing the two procedures would reduce costs and burdens on lenders by permitting them to incorporate the proposed procedures for obtaining authorizations into existing systems. Accordingly, as discussed above, the proposed approach is designed to achieve this goal.

The Bureau seeks comment on all aspects of the proposed approach for obtaining authorizations. In particular, the Bureau seeks comment on whether the proposed approach would provide adequate protections to consumers and whether it would achieve the intended goal of reducing lender costs and burdens by being compatible with existing systems and procedures.

14(c)(3)(ii) Provision of Transfer Terms to Consumer

Proposed § 1041.14(c)(3)(ii) would establish requirements and conditions for providing to the consumer the required terms of each additional payment transfer for purposes of requesting the consumer's authorization. The Bureau is proposing these provisions pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules "to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service . . . ," in addition to its authority pursuant to its authority under section 1031(b) of the Act to include in its rules identifying unfair, abusive, or deceptive acts or practices requirements for the purpose of preventing such acts or practices.

The Bureau has designed the process for requesting authorization to work in tandem with the requirements in proposed § 1041.15(d) for providing to consumers a consumer rights notice informing them that the restriction on further payment transfers has been triggered, and contemplates that lenders may often send the notice and the request for authorization together. However, if lenders choose to bifurcate the notice and authorization process, proposed § 1041.14(c)(3)(ii) would provide that the request for authorization can be made no earlier than the date on which the notice is provided. Further, proposed § 1041.14(c)(3)(iii) would provide that the consumer's authorization can be obtained no earlier than when the consumer is considered to receive the notice, as specified in the proposed rule. In addition to these requirements, proposed § 1041.14(c)(3)(ii) would require that the request for authorization contain the required payment transfer terms and certain other required elements, and would permit the request to be made through a number of different means of communication. The Bureau believes that the provisions in proposed § 1041.14(c)(3)(ii) would help to ensure that consumers make fully informed decisions whether to grant a new authorization, including by requiring that consumers first be informed of their rights under the proposed restriction on further payment withdrawals and by helping to ensure that consumers can make an informed decision as between granting authorization for additional payment transfers and other convenient repayment options, such as payments by cash or money order, "push" bill payment services, and single immediate payment transfers authorized pursuant to proposed § 1041.14(d).

Specifically, under proposed § 1041.14(c)(3)(ii), a lender would be required to request authorization by providing the payment transfer terms required by § 1041.14(c)(2)(i) (*i.e.*, the specific date, amount, and payment channel of each transfer) and, if applicable, the statements required by § 1041.14(c)(2)(iii)(A) or (B) (*i.e.*, for purposes of seeking the consumer's authorization for payment transfers to collect certain fees) no earlier than the date on which the lender provides to the consumer the consumer rights notice required by § 1041.15(d). (As discussed in detail, below, a lender would be required to provide the notice to the consumer no later than three business days after the prohibition on further payment transfers is triggered.) As noted above, while the lender would be permitted to request the consumer's authorization on the same day that the lender provides the consumer rights notice, the authorization would not be valid unless it is signed or otherwise agreed to by the consumer after the consumer is considered to receive the notice as specified in proposed § 1041.14(c)(3)(iii), discussed in detail below.

Proposed comment 14(c)(3)(ii)-1 explains that while a lender is permitted to request authorization on or after the day that the lender provides the consumer rights notice to the consumer, the exception in § 1041.14(c) does not apply unless the consumer's signed authorization is obtained no earlier than the date on which the consumer is considered to have received the notice, as specified in § 1041.14(c)(3)(iii).

Proposed comment 14(c)(3)(ii)-2 clarifies that a lender is not prohibited under the provisions from providing different options for the consumer to select from with respect to the date, amount, and payment channel of each additional payment transfer when requesting the consumer's authorization. It further clarifies that the lender is not prohibited under the provisions from making a follow-up request by providing a different set of terms for the consumer to consider. Last, as an example, it provides that if the consumer declines an initial request to authorize two recurring transfers for a particular amount, the lender may make a follow-up request for the consumer to authorize three recurring transfers for a smaller amount. The Bureau believes it is important to emphasize that the approach in proposed § 1041.14(c) is designed to ensure that when lenders seek authorization, consumers are not simply dictated the terms of additional payment transfers but rather are able to make an informed decision whether to grant authorization based on their own understanding of the consequences that may flow from their decision to do so.

With respect to how the request for authorization can be conveyed to the consumer, proposed § 1041.14(c)(3)(ii) would permit the lender to provide the required terms and statements to the consumer as a predicate to requesting authorization by any one of three specified means. First, proposed § 1041.14(c)(3)(ii)(A) would permit the lender to provide the terms and statements in writing, either in person or by mail. Second, proposed § 1041.14(c)(3)(ii)(A) also would permit the lender to provide the terms and statements in a retainable form by email if the consumer has consented to receive electronic disclosures in this manner under § 1041.15(a)(4) or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d). Third, under proposed § 1041.14(c)(3)(ii)(B), lenders could request authorization by oral telephone communication in certain limited circumstances.

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[840] *See* 12 CFR 1005.10(b).

[841] *See* 12 CFR part 1005, Supp. I, comment 10(b)-5.

Accordingly, when a lender is already providing the payments-related notices in § 1041.15(d) to the consumer by email in accordance with the consumer's valid consent, the lender could request authorization in that manner under proposed § 1041.14(c)(3)(ii)(A) without having to go through a second email-delivery consent process. In addition, a lender could provide the terms and statements by email when the lender has not previously obtained the consumer's consent to receive disclosures in that manner, provided that the consumer agrees in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d). Proposed comment 14(c)(3)(ii)(A)-1 provides an illustrative example of how a consumer agrees to receive the request for authorization by email in the course of a communication initiated by the consumer in response to the consumer rights notice.

The Bureau believes that permitting lenders to request authorization by email if the consumer agrees when affirmatively responding to the consumer rights notice would ensure that consumers are able to discuss with lender their options for repaying in a timely manner, and, in addition, help to ensure that when deciding whether to authorize additional payment transfers, consumers are aware of their rights as stated in the notice, including the protections accorded them by the limitation on additional payment transfers. The Bureau notes that email would be the only electronic means of requesting authorization permitted under proposed § 1041.14(c)(3)(ii)(A). Accordingly, lenders could not transmit the payment transfer terms and statements to the consumer by text message or mobile application for purposes of requesting authorization, even if the consumer has consented to receive electronic disclosures by text or mobile application for purposes of receiving the payment withdrawal notices under proposed § 1014.15(b). For the payment withdrawal notices, the Bureau is proposing a two-part disclosure whereby the consumer would receive a truncated notice by text or mobile application and then click through to get the full notice. With regard to requests for new authorizations, however, the Bureau believes that it may be important for consumers to be able to access the entire request in the first instance without having to click through and without having to contend with, when viewing the request, the character limitations and screen space restrictions that typically apply to communications by text message or mobile application. The Bureau is therefore proposing to permit electronic requests for authorization to be provided to consumers only by email (except for electronic requests made by oral telephone communication in certain limited circumstances). However, the Bureau seeks comment on this proposed approach. In particular, the Bureau seeks comment on whether the rule should include provisions permitting lenders to provide electronic requests for authorization via text message or mobile application, and on what specific requirements as to access and formatting may be appropriate for electronic requests, including whether it may be appropriate to adopt a two-part disclosure similar to what the Bureau is proposing for the payment withdrawal notices.

Last, proposed § 1041.14(c)(3)(ii)(B) would permit the lender to provide the terms and statements to the consumer by oral telephone communication in certain limited circumstances. Specifically, it would permit the lender to provide the terms and statements by oral telephone communication if the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice required by § 1041.15(d) and agrees to receive the terms and statements in that manner in the course of, and as part of, the same communication. (Relatedly, proposed § 1041.14(c)(iii)(B), discussed below, would provide that, if the consumer grants authorization in the course of an oral telephone communication, the lender must record the call and retain the recording.) The Bureau is aware that some lenders currently obtain consumers' authorizations for preauthorized electronic fund transfers under Regulation E via recorded telephone conversations. This provision is designed to be compatible with such practices. However, by limiting such authorizations only to situations in which the consumer has affirmatively contacted the lender by telephone in response to the required notice, the provision also is designed to ensure that such authorizations are obtained from the consumer only when the consumer has sought out the lender, rather than in the course of a collections call that the lender makes to the consumer.

Proposed comment 14(c)(3)(ii)(A)-2 clarifies that the required payment transfer terms and statements may be provided to the consumer electronically in accordance with the requirements for requesting the consumer's authorization in § 1041.14(c)(2)(ii) without regard to the E-Sign Act. The proposed comment further clarifies, however, that in cases where the consumer responds to the request with an electronic authorization, the authorization is valid under § 1041.14(c)(3)(iii) only if it is signed in accordance with the signature requirements in the E-Sign Act. In addition, the comment cross-references § 1041.14(c)(3)(iii) and comment 14(c)(3)(iii)-1 for additional guidance.

Proposed comment 14(c)(3)(ii)(A)-3 clarifies that a lender could make the request for authorization in writing or by email in tandem with providing the consumer rights notice in § 1041.15(d), subject to certain requirements and conditions. Specifically, the proposed comment clarifies that a lender is not prohibited under the provisions in § 1041.14(c)(3)(ii)(A) from requesting authorization and providing the consumer rights notice in the same communication, such as in a single written mailing or a single email to the consumer. It further clarifies, however, that the consumer rights notice still must be provided in accordance with the requirements and conditions in § 1041.15(d), including, but not limited to, the segregation requirements that apply to the notice. The proposed comment further provides, as an example, that if a lender mails the request for authorization and the notice to the consumer in the same envelope, the lender must provide the notice on a separate piece of paper, as required under § 1041.15(d).

The Bureau seeks comment on all aspects of the proposed provisions for providing the payment transfer terms and statements to the consumer as a predicate to requesting the consumer's authorization. In particular, the Bureau seeks on comment on whether for purposes of requesting authorization, lenders should be permitted to provide the required terms and statements by oral telephone communication. In addition, the Bureau seeks comment on whether including model statements or forms in the rule would facilitate compliance and enable more effective disclosure of the required terms and statements.

14(c)(3)(iii) Signed Authorization Required

Proposed § 1041.14(c)(3)(iii) would establish requirements and conditions that the lender must satisfy for a consumer's authorization to be valid under the exception.

14(c)(3)(iii)(A) General

Specifically, proposed § 1041.14(c)(3)(iii)(A) would provide that for an authorization to be valid, it must be signed or otherwise agreed to by the consumer in a format that memorializes the required payment transfer terms and, if applicable, required statements to which the consumer has agreed. In addition, proposed § 1041.14(c)(3)(iii)(A) would provide that the signed authorization must be obtained no earlier than the date on which the consumer receives the consumer rights notice required by § 1041.15(d). It would further provide that, for purposes of the provision, the consumer is considered to receive the notice at the time it is provided in person or electronically, or, if the notice is provided by mail, the earlier of the third business day after mailing or the date on which the consumer affirmatively responds to the mailed notice.

The Bureau believes that these requirements would help to ensure that consumers' decisions to authorize additional payment transfers are made in full awareness of their rights as stated in the notice, including their protections under the restriction on additional payment transfers. The Bureau further believes that these requirements would accommodate situations in which the consumer wishes to authorize additional payment transfers promptly, given that in many instances the lender could obtain the consumer's authorization on the same day that the notice is provided and received, particularly when the notice is provided in person or electronically.

Proposed comment 14(c)(3)(iii)(A)-1 explains that, for authorizations obtained electronically, the requirement that the authorization be signed or otherwise agreed to by the consumer is satisfied if the E-Sign Act requirements for electronic records and signatures are met. The E-Sign Act establishes that electronic signatures and electronic records are valid if they meet certain criteria.[842] An electronic signature is "an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record." [843] An electronic record is "a contract or other record created, generated, sent, communicated, received, or stored by electronic means." [844] The proposed comment further provides, as two examples, that the requirement is satisfied by an email from the consumer or by a code entered by the consumer into the consumer's telephone keypad, assuming that in each case the signature requirements in the E-Sign Act are complied with.

Proposed comment 14(c)(3)(iii)(A)-2 explains that a consumer affirmatively responds to the consumer rights notice that was provided by mail when the consumer calls the lender on the telephone to discuss repayment options after receiving the notice.

14(c)(3)(iii)(B) Special Requirements for Authorization Obtained by Oral Telephone Communication

Proposed § 1041.14(c)(3)(iii)(B) would require that, if the consumer's authorization is granted in the course of an oral telephone communication, the lender must record the call and retain the recording. The Bureau is proposing this requirement for compliance purposes. The Bureau is aware that most lenders already record and retain calls for purposes of obtaining consumers' authorizations under Regulation E or for servicing and collections purposes, and thus believes that lenders already have in place the technology and systems necessary to comply with this requirement. Nonetheless, the Bureau seeks comment on the burdens, costs, or other challenges of complying with this requirement.

14(c)(3)(iii)(C) Memorialization Required

Proposed § 1041.14(c)(3)(iii)(C) would establish procedures for providing a memorialization of the authorization to the consumer when the authorization is granted in the course of a recorded telephonic conversation or is otherwise not immediately retainable by the consumer at the time of signature. The Bureau is proposing these provisions pursuant to its authority under section 1032(a) of the Dodd-Frank Act to prescribe rules "to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service . . . ," in addition to its authority under section 1031(b) of the Act to include in its rules identifying unfair, abusive, or deceptive acts or practices requirements for the purpose of preventing such acts or practices.

Specifically, in such circumstances, proposed § 1041.14(c)(3)(iii) would require lenders to provide to the consumer a memorialization in a retainable form no later than the date on which the first payment transfer authorized by the consumer is initiated. These requirements are intended to ensure that the terms of the payment transfers authorized by consumers are provided to them in a manner that permits them to review authorizations for consistency with their understanding of the terms and, when necessary, contact the lender to request clarification or discuss potential errors. In addition, for consumers' future reference and planning purposes, the copy would provide a record of all additional payment transfers that the lender may initiate pursuant to the authorization. Proposed § 1041.14(c)(3)(iii)(C) would further provide that the memorialization may be provided to the consumer by email in accordance with the requirements and conditions in § 1041.14(c)(3)(ii)(A). Accordingly, lenders could provide the memorialization by email if the consumer has consented to receive disclosures in that manner under § 1041.15(a)(4) or has so agreed in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d). This provision is designed to ensure that consumers receive the copy in the timeliest possible manner and to reduce the burden on lenders of providing the copy.

Proposed comment 14(c)(3)(iii)(C)-1 clarifies that the copy is deemed to be provided to the consumer on the date it is mailed or transmitted. Proposed comment 14(c)(3)(iii)(C)-2 clarifies that the requirement that the memorialization be provided in a retainable form is not satisfied by a copy of recorded telephone call, notwithstanding that the authorization was obtained in that manner. Proposed comment 14(c)(3)(iv)(C)-3 clarifies that a lender is permitted under the provision to the provide the memorialization to the consumer by email in accordance with the requirements and conditions in § 1041.14(c)(3)(ii)(A), regardless of whether the lender requested the consumer's authorization in that manner. It further clarifies, by providing an example, that if the lender requested the consumer's authorization by telephone but also has obtained the consumer's consent to receive electronic disclosures by email under proposed § 1041.15(a)(4), the lender is permitted under the provision to provide the copy to the consumer by email, as specified in proposed § 1041.14(c)(3)(ii)(A).

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[842] *See* 15 U.S.C. 7001(a)(1).

[843] 15 U.S.C. 7006(5).

[844] 15 U.S.C. 7006(4).

The Bureau seeks comment on all aspects of this proposed provision. In particular, the Bureau seeks comment on whether the consumer should be accorded a specified period of time to review the terms of the authorization as set forth in the memorialization before the lender initiates the first payment transfer pursuant to the authorization. In addition, the Bureau seeks comment on the burdens and costs for lenders of providing the memorialization.

14(c)(4) Expiration of Authorization

Proposed § 1041.14(c)(4) specifies the circumstances in which an authorization for additional payment transfers obtained pursuant to proposed § 1041.14(c) expires or becomes inoperative. First, proposed § 1041.14(c)(4)(i) provides that a consumer's authorization becomes null and void for purposes of the exception if the lender obtains a subsequent new authorization from the consumer pursuant to the exception. This provision is intended to ensure that, when necessary, lenders can obtain a consumer's new authorization to initiate transfers for different terms, or to continue collecting payments on the loan, and that such new authorization would supersede the prior authorization. Second, proposed § 1041.14(c)(4)(ii) provides that a consumer's authorization becomes null and void for purposes of the exception if two consecutive payment transfers initiated pursuant to the consumer's authorization have failed, as specified in proposed § 1041.14(b). The Bureau is proposing this provision for clarification purposes.

14(d) Exception for Initiating a Single Immediate Payment Transfer at the Consumer's Request

Proposed § 1041.14(d) would set forth a second exception to the prohibition on initiating further payment transfers from a consumer's account in § 1041.14(b). In contrast to the exception available under proposed § 1041.14(c), which would allow lenders to initiate multiple, recurring additional payment transfers authorized by the consumer in a single authorization, this exception would permit lenders to initiate a payment transfer only on a one-time basis immediately upon receipt of the consumer's authorization, while leaving the overall prohibition in place. This limited approach is designed to facilitate the collection of payments that are proffered by the consumer for immediate processing, without requiring compliance with the multi-stage process in proposed § 1041.14(c), and to ensure that consumers have the option to continue making payments, one payment at a time, after the prohibition in proposed § 1041.14(b) has been triggered, without having to provide lenders broader, ongoing access to their accounts.

Specifically, subject to certain timing requirements, proposed § 1041.14(d) would permit lenders to initiate a payment transfer from a consumer's account after the prohibition has been triggered, without obtaining the consumer's authorization for additional payment transfers in accordance with proposed § 1041.14(c), if the consumer authorizes a one-time electronic fund transfer or proffers a signature check for immediate processing. Under proposed § 1041.14(d)(1), a payment transfer initiated by either of these two payment methods would be required to meet the definition of a "single immediate payment transfer at the consumer's request" in proposed § 1041.14(a)(2). Thus, for the exception to apply, the lender must initiate the electronic fund transfer or deposit the check within one business day after receipt.

In addition, proposed § 1041.14(d)(2) would provide that, for the exception to apply, the consumer must authorize the underlying one-time electronic fund transfer or provide the underlying signature check to the lender, as applicable, no earlier than the date on which the lender provides to the consumer the consumer rights notice required by proposed § 1041.15(d) or on the date that the consumer affirmatively contacts the lender to discuss repayment options, whichever date is earlier. The Bureau believes that many consumers who elect to authorize only a single transfer under this exception will do so in part because they have already received the notice, have been informed of their rights, and have chosen to explore their options with the lender. The Bureau also believes that in some cases, consumers may contact the lender after discovering that the lender has made two failed payment attempts (such as by reviewing their online bank statements) before the lender has provided the notice. Moreover, by definition, this exception would not require the consumer to decide whether to provide the lender an authorization to resume initiating payment transfer from her account on an ongoing basis. Accordingly, the Bureau believes it is unnecessary to propose requirements similar to those proposed for the broader exception in proposed § 1041.14(c), as discussed above, to ensure that consumers have received the notice informing them of their rights at the time of authorization.

Proposed comment 14(d)-1 cross-references proposed § 1041.14(b)(a)(2) and accompanying commentary for guidance on payment transfers that meet the definition of a single immediate payment transfer at the consumer's request. Proposed comment 14(d)-2 clarifies how the prohibition on further payment transfers in proposed § 1041.14(b) continues to apply when a lender initiates a payment transfer pursuant to the exception in proposed § 1041.14(d). Specifically, the proposed comment clarifies that a lender is permitted under the exception to initiate the single payment transfer requested by the consumer only once and thus is prohibited under § 1041.14(b) from re-initiating the payment transfer if it fails, unless the lender subsequently obtains the consumer's authorization to re-initiate the payment transfer under § 1041.14(c) or (d). The proposed comment further clarifies that a lender is permitted to initiate any number of payment transfers from a consumer's account pursuant to the exception in § 1041.14(d), provided that the requirements and conditions are satisfied for each such transfer. Accordingly, the exception would be available as a payment option on a continuing basis after the prohibition in proposed § 1041.14(b) has been triggered, as long as each payment transfer is authorized and initiated in accordance with the proposed exception's timing and other requirements. In addition, the proposed comment cross-references comment 14(b)(2)(ii)-3 for further guidance on how the prohibition in § 1041.14(b) applies to the exception in § 1041.14(d).

Proposed comment 14(d)-3 explains, by providing an example, that a consumer affirmatively contacts the lender when the consumer calls the lender after noticing on her bank statement that the lender's last two payment withdrawal attempts have been returned for nonsufficient funds.

The Bureau believes that the proposed requirements and conditions in § 1041.14(d) would prevent the harms that otherwise would occur if the lender—absent obtaining the consumer's authorization for additional payment transfers under proposed § 1041.14(c)—were to initiate further transfers after two consecutive failed attempts. The Bureau believes that consumers who authorize such transfers will do so based on their firsthand knowledge of their account balance at the time that the transfer, by definition, must be initiated. As a result of these two factors, the Bureau believes there is a significantly reduced risk that the transfer will fail.

The Bureau seeks comment on all aspects of the exception in proposed § 1041.14(d). In particular, the Bureau seeks comment on whether the rule should include provisions to ensure that consumers have received the required notice informing them of their rights at the time of authorization.

Section 1041.15 Disclosure of Payment Transfer Attempts

Overview

As discussed above in Market Concerns—Short-term Loans and Market Concerns—Long-Term Loans, consumers who use payday and payday installment loans tend to be in economically precarious positions. They have low to moderate incomes, live paycheck to paycheck, and generally have no savings to fall back on. They are particularly susceptible to having cash shortfalls when payments are due and can ill afford additional fees on top of the high cost of these loans. At the same time, as discussed above in Market Concerns—Payments, many lenders in these markets may often obtain multiple authorizations to withdraw account funds through different channels, exercise those authorizations in ways that consumers do not expect, and repeatedly re-present returned payments in ways that can substantially increase costs to consumers and endanger their accounts.

In addition to proposing in § 1041.14 to prohibit lenders from attempting to withdraw payment from a consumer's account after two consecutive payment attempts have failed, unless the lender obtains the consumer's new and specific authorization to make further withdrawals, the Bureau is proposing in § 1041.15 to use its authority under section 1032(a) of the Dodd-Frank Act to require two new disclosures to help consumers better understand and mitigate the costs and risks relating to payment presentment practices in connection with covered loans. While the interventions in § 1041.14 are designed to protect consumers who are already experiencing severe financial distress in connection with their loans and depository accounts, the primary intervention in § 1041.15 is designed to give all covered loan borrowers who grant authorizations for payment withdrawals the information they need to prepare for upcoming payments and to take proactive steps to manage any errors or disputes before funds are deducted from their accounts.

Specifically, proposed § 1041.15(b) would require lenders to provide consumers with a payment notice before initiating each payment transfer on a covered loan. This notice is designed to alert consumers to the timing, amount, and channel of the forthcoming payment transfer and to provide consumers with certain other basic information about the payment transfer. If the payment transfer would be for a different amount, at a different time, through a different payment channel than the consumer might have expected based upon past practice, or for the purpose of re-initiating a returned transfer, the notice would specifically alert the consumer to the change. For situations when a lender obtains consumer consent to deliver the payment notice through electronic means, proposed § 1041.15(c) would provide content requirements for an electronic short notice, which would be a truncated version of the payment notice formatted for electronic delivery through email, text message, or mobile application.

In addition, proposed § 1041.15(d) would complement the intervention in § 1041.14 by requiring lenders to provide a consumer rights notice after a lender has triggered the limitations in that section. This consumer rights notice would inform consumers that a lender has triggered the provisions in proposed § 1041.14 and is no longer permitted to initiate payment from the consumer's account unless the consumer chooses to provide a new authorization. The Bureau believes informing consumers of the past failed payments and the lender's inability to initiate further withdrawals would help prevent consumer confusion or misinformation and help consumers make an informed decision going forward on whether and how to grant a new authorization to permit further withdrawal attempts. For lenders to deliver the consumer rights notice required under proposed § 1041.15(d) through an electronic delivery method, proposed § 1041.15(e) would require the lenders to provide an electronic short notice that contains a link to the full consumer rights notice.

Under the proposal, lenders would be able to provide these notices by mail, in person or, with consumer consent, through electronic delivery methods such as email, text message, or mobile application. As discussed further below, the Bureau is seeking to facilitate electronic delivery of the notices wherever practicable because it believes that such methods would make the disclosures more timely, more effective, and less expensive for all parties. However, the Bureau believes it is also important to ensure that consumers without electronic access would receive the benefits of the disclosures. Given that electronic delivery may be the most timely and convenient method of delivery for many consumers, the Bureau believes that facilitating electronic delivery is consistent with the Bureau's authority under section 1032(a) of the Dodd-Frank Act to ensure that the features of any consumer financial product are "fully, accurately, and effectively disclosed" to consumers.

The Bureau is proposing model clauses and forms in proposed § 1041.15(a)(7). These proposed model clauses and forms could be used at the option of covered persons for the provision of the notices that would be required under proposed § 1041.15. The proposed model clauses and forms are located in appendix A. These proposed model clauses and forms were validated through two rounds of consumer testing in the fall of 2015. The consumer testing results are provided in the FMG Report.[845]

Legal Authority

The payment notice, consumer rights notice, and short electronic notices in proposed § 1041.15 are being proposed under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of consumer financial products and services "both initially and over the term of the product or service," are disclosed "fully, accurately, and effectively" in a way that "permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the "features" of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services." Accordingly, in developing the proposed rule under Dodd-Frank Act section 1032(a), the Bureau has considered consumer complaints, industry disclosure practices, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. The Bureau has also considered the evidence developed through its consumer testing as discussed in Market Concerns—Payments and in the FMG Report.

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[845] FMG Report.

Section 1032(b)(1) also provides that "any final rule prescribed by the Bureau under this [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures." Any model form issued pursuant to this authority shall contain a clear and conspicuous disclosure that, at a minimum, uses plain language that is comprehensible to consumers, contains a clear format and design, such as an easily readable type font, and succinctly explains the information that must be communicated to the consumer.[846] Section 1032(b)(2) provides that any model form the Bureau issues pursuant to section 1032(b) shall be validated through consumer testing. The Bureau conducted two rounds of qualitative consumer testing in September and October of 2015. The testing results are provided in the FMG Report. Section 1032(d) provides that "any covered person that uses a model form included with a rule issued under this [section 1032] shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form."

15(a) General Form of Disclosures

Proposed section § 1041.15(a) would establish basic rules regarding the format and delivery for all notices required under § 1041.15 and establish requirements for a two-step process for the delivery of electronic disclosures as further required under proposed § 1041.15(c) and (e). The format requirements generally parallel the format requirements for other disclosures related certain covered short-term loans as provided in proposed § 1041.7, as discussed above, except that § 1041.15(a) would permit certain disclosures by text message or mobile application while proposed § 1041.7 would not. Here, the two-step electronic delivery process would involve delivery of short-form disclosures to consumers by text message, mobile application, or email that would contain a unique Web site address for the consumer to access the full notices required under proposed § 1041.15(b) for each upcoming withdrawal attempt and under proposed § 1041.15(d) where the lender's two consecutive failed withdrawal attempts have triggered the protections of § 1041.14.

Because the disclosures in proposed § 1041.15 involve the initiation of one or more payment transfers in connection with existing loans, the Bureau believes, as discussed below, that electronic disclosures would generally be more timely, more effective, and less expensive for consumers and lenders than paper notices. At the same time, the Bureau recognizes that there are technical and practical challenges with regard to electronic channels. The two-stage process is designed to balance such considerations, for instance by adapting the notices in light of format and length limitations on text message and by accommodating the preferences of consumers who are using mobile devices in the course of daily activities and would rather wait to access the full contents until a time and place of their choosing. The Bureau seeks comment on all aspects of its approach to the form of disclosures and in particular to electronic delivery of the notices, as discussed further below.

15(a)(1) Clear and Conspicuous

Proposed § 1041.15(a)(1) would provide that the disclosures required by proposed § 1041.15 must be clear and conspicuous. The section would further provide that the disclosures may use commonly accepted or readily understandable abbreviations. Proposed comment 15(a)(1)-1 clarifies that disclosures are clear and conspicuous if they are readily understandable and their location and type size are readily noticeable to consumers. This clear and conspicuous standard is based on the standard used in other consumer financial services laws and their implementing regulations, including Regulation E subpart B § 1005.31(a)(1). Requiring that the disclosures be provided in a clear and conspicuous manner would help consumers understand the information in the disclosure about the costs, benefits, and risks of the transfer, consistent with the Bureau's authority under section 1032(a) of the Dodd-Frank Act.

The Bureau seeks comment on the appropriateness of proposing this general standard and whether additional guidance would be useful in the context of these specific disclosures, particularly including its applicability to electronic delivery on mobile devices.

15(a)(2) In Writing or Electronic Delivery

Proposed § 1041.15(a)(2) would require disclosures mandated by proposed § 1041.15 to be provided in writing or through electronic delivery. The disclosures could be provided through electronic delivery as long as the requirements of proposed paragraph 15(a)(4) are satisfied. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. The requirement in proposed § 1041.15(a)(2) could not be satisfied by being provided orally or through a recorded message. Proposed comment 15(a)(2) explains that the disclosures that would be required by proposed § 1041.15 may be provided electronically as long as the requirements of § 1041.15(a)(4) are satisfied, without regard to the E-Sign Act, 15 U.S.C. 7001 *et seq.*

The Bureau is proposing to allow electronic delivery because electronic communications are more convenient than paper communications for some lenders and consumers. The Bureau has therefore proposed a tailored regime that it believes would encourage lenders and consumers to identify an appropriate method of electronic delivery where consumers have electronic access.

The Bureau understands that some lenders already contact their borrowers through electronic means such as text message and email.[847] Lenders that currently provide electronic notices have informed the Bureau that they provide both email and text message as communication options to consumers. A major trade association for online lenders reported that many of its members automatically enroll consumers in an email notification system as part of the origination process but allow consumers to opt in to receive text message notifications of upcoming payments. One member of this association asserted that approximately 95 percent of consumers opt in to text message notifications, so email effectively functions as a back-up delivery method. Similarly, during the Bureau's SBREFA process a SER from an online-only lender reported that 80 percent of its customers opt in to text message notifications. According to a major payday, payday installment, and vehicle title lender that offers loans through storefronts and the internet, 95 percent of its customers have access to the internet and 70 percent have a home computer.[848] Lenders may prefer contacting consumers through these methods given that they are typically less costly than mailing a paper notice. Given the convenience and timeliness of electronic notices, the disclosure information may provide the most utility to consumers when it is provided through electronic methods.

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[846] Dodd-Frank Act section 1032(b)(2); 12 U.S.C. 5532(b)(2).

[847] During the SBREFA process, several of the SERs explained that they currently provide consumers with text message reminders of upcoming payments. Other public information indicates that lenders contact consumers through many of these methods. *See, e.g.*, ENOVA Int'l, Inc. 2014 Annual Report (Form 10-K), at 9 ("Call center employees contact customers following the first missed payment and periodically thereafter. Our primary methods of contacting past due customers are through phone calls, letters and emails.").

The Bureau believes that providing consumers with disclosures that they can view and retain would allow them to more easily understand the information, detect errors, and determine whether the payment is consistent with their expectations. Given the detailed nature of the information provided in the disclosures required by proposed § 1041.15, including payment amount, loan balance, failed payment amounts, consumer rights, and various dates, the Bureau believes that oral disclosures would not provide consumers with a sufficient opportunity to understand and use the disclosure information.

The Bureau seeks comment on the benefits and risks to consumers of providing these disclosures through electronic delivery. The Bureau requests comment on the electronic delivery requirements in proposed § 1041.15(a)(2), including the extent that they protect consumers' interests, whether they appropriately encourage electronic delivery, and whether they should incorporate specific elements of the E-Sign Act. For circumstances when lenders deliver the notices required by § 1041.15 through electronic delivery in accordance with the requirements in proposed § 1041.15(a)(4), the Bureau specifically seeks comment on whether lenders should be required to format the full notice so that it is viewable across all screen sizes. The Bureau seeks comment on the burdens and benefits of providing the notice in form that responds to the screen size it is being viewed on while still meeting the other formatting and content provisions proposed in § 1041.15. The Bureau also seeks comment on situations where consumers would be provided with a paper notice. The Bureau specifically seeks comment on the burdens of providing these notices through paper, the utility of paper notices to consumers, and additional ways that this provision can encourage electronic delivery.

15(a)(3) Retainable

Proposed § 1041.15(a)(3) would require disclosures mandated by proposed § 1041.15 to be provided in a retainable form, except for the electronic short notices under § 1041.15(c) or (e) that are delivered through mobile application or text message and explained below. Electronic short notices provided by email would still be subject to the retainability requirement. Proposed comment 15(a)(3) explains that electronic notices are considered retainable if they are in a format that is capable of being printed, saved, or emailed by the consumer.

Having the disclosures in a retainable format would enable consumers to refer to the disclosure at a later point in time, such as after a payment has posted to their account or if they contact the lender with a question, allowing the disclosures to more effectively disclose the features of the product to consumers. The Bureau is not proposing to require that text messages and messages within mobile applications be permanently retainable because of concerns that technical limitations beyond the lender's control may make retention difficult. However, the Bureau anticipates that such messages would often be kept on a consumer's device for a considerable period of time and could therefore be accessed again. In addition, proposed § 1041.15 would require that such messages contain a link to a Web site containing a full notice that would be subject to the general rule under proposed § 1041.15(a)(3) regarding retainability. A lender would also be required to maintain policies, procedures, and records to ensure compliance with the notice requirement under proposed § 1041.18.

The Bureau seeks comment on whether to allow for an exception to the requirement that notices be retainable for text messages and messages within mobile applications and whether other requirements should be placed on these delivery methods, such as a requirement that the URL link stay active for certain period of time. The Bureau specifically seeks comment on whether the notices should warn consumers that they should save or print the full notice given that URL link will not be maintained indefinitely.

15(a)(4) Electronic Delivery

Proposed § 1041.15(a)(4) would contain various requirements that are designed to facilitate delivery of the notices required under proposed § 1041.15 through electronic channels, while appropriately balancing concerns about consumer consent, technology access, and preferences for different modes of electronic communication. As detailed further below, the proposed rule would provide that disclosures may be provided through electronic delivery if the consumer affirmatively consents in writing or electronically to the particular electronic delivery method. Lenders may obtain this consent in writing or electronically. The proposed rule would require that lenders provide email as an electronic delivery option if they also offer options to deliver notices through text message or mobile application. Proposed § 1041.15(a)(4) would also set forth rules to govern situations where the consumer revokes consent for delivery through a particular electronic channel or is otherwise unable to receive notices through that channel.

15(a)(4)(i) Consumer Consent

Proposed § 1041.15(a)(4)(i) would specify the consumer consent requirements for provision of the disclosures through electronic delivery. Proposed § 1041.15(a)(4)(i)(A) would require lenders to obtain a consumer's affirmative consent to receive the disclosures through a particular method of electronic delivery. These methods might include email, text message, or mobile application. The Bureau believes it is important for consumers to be able to choose a method of delivery to which they have access and that will best facilitate their use of the disclosures, and that viewable documentation would facilitate both informed consumer choice and supervision of lender compliance. The Bureau is concerned that consumers could receive disclosures through a method that they do not prefer or that is not useful to them if they are automatically defaulted into an electronic delivery method. Similarly, the Bureau is concerned that a consumer may receive disclosures through a method that they do not expect if they are provided with a broad electronic delivery option rather than an option that specifies the method of electronic delivery.

The Bureau requests comment on this proposed affirmative consent requirement. The Bureau is aware that during the origination process lenders obtain consumer consent for other terms, such as authorization for preauthorized electronic fund transfers under Regulation E § 1005.10(b), and seeks comment on whether obtaining consumer consent to electronic delivery in writing or electronically would introduce any significant marginal burden. The Bureau seeks comment on whether lenders should be permitted to obtain consent orally.

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[848] Cmty. Choice Fin. Inc., 2014 Annual Report (Form 10-K), at 4 (Mar. 30, 2015), *available at https://www.sec.gov/Archives/edgar/data/1528061/000110465915023986/a14-26759_110k.htm*. At the time of the filing, most (about half) of Community Choice's revenue was from short-term loans. *Id*. at 6. Both short-term loans and long-term installment loans were being offered online. *Id*. at 6-7.

15(a)(4)(i)(B) Email Option Required

Proposed § 1041.15(4)(i)(B) would require that when obtaining consumer consent to electronic delivery, a lender must provide the consumer with the option to select email as the method of electronic delivery, separate and apart from any other electronic delivery methods such as mobile application or text message. Proposed comment 15(a)(4)(i)(B) explains that the lender may choose to offer email as the only method of electronic delivery.

The Bureau believes that such an approach would facilitate consumers' choice of the electronic delivery channel that is most beneficial to them, in light of differences in access, use, and cost structures between channels. For many consumers, delivery via text message or mobile application may be the most convenient and timely option. However, there are some potential tradeoffs. For example, consumers may incur costs when receiving text messages and may have privacy concerns about finance-related text messages appearing on their mobile phones. During consumer testing, some of the participants had a negative reaction to receiving notices by text message. These negative reactions included privacy concerns about someone being able to see that they were receiving a notice related to a financial matter when it came in the form of a text message. The Bureau believes that mobile application messages may create similar privacy concerns since such messages may generate alerts or banners on a consumer's mobile device.

However, the Bureau believes that receiving notices by text message may be useful to some consumers. In general, most consumers have access to a mobile phone. According to a recent Federal Reserve study on mobile banking and financial services, approximately 90 percent of "underbanked" consumers—consumers who have bank accounts but use non-bank products like payday loans—have access to a mobile phone.[849] Fewer underbanked consumer have a phone with Internet access, although the coverage is still significant at 73 percent. A few participants in the Bureau's consumer testing indicated a preference for receiving notices by text message. The Bureau believes that text message delivery should be allowed as long as consumers have the option to choose email delivery, which for some consumers may be a strongly preferred method of disclosure delivery. The Bureau believes that requiring an email option may help ensure that the disclosure information is effectively disclosed to consumers, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act. The Bureau seeks comment on this proposed email requirement, including the relative burden on lenders of delivering notices through email in comparison to other methods such as text message and paper mail. The Bureau also seeks comment on whether it should require lenders to use free-to-end-user text messages if text messaging is provided as an option and selected by consumers.

15(a)(4)(ii) Subsequent Loss of Consent

Proposed § 1041.15(a)(4)(ii) would prohibit a lender from providing the notices required by proposed § 1041.15 through a particular electronic delivery method if there is subsequent loss of consent as provided in proposed § 1041.15(a)(4)(ii), either because the consumer revokes consent pursuant to proposed § 1041.15(a)(4)(ii)(A) or the lender receives notification that the consumer is unable to receive disclosures through a particular method as described in proposed § 1041.15(a)(4)(ii)(B). Proposed comment 15(a)(4)(ii)(B)-1 explains that the prohibition applies to each particular electronic delivery method. It provides that when a lender loses a consumer's consent to receive disclosures via text message, for example, but has not lost the consumer's consent to receive disclosures via email, the lender may continue to provide disclosures via email, assuming that all of the requirements in proposed § 1041.15(a)(4) are satisfied. Proposed comment 15(a)(4)(ii)(B)-2 clarifies that the loss of consent applies to all notices required under proposed § 1041.15. For example, if a consumer revokes consent in response to the electronic short notice text message delivered along with the payment notice under proposed § 1041.15(c), that revocation also would apply to text message delivery of the electronic short notice that would be delivered with the consumer rights notice under proposed § 1041.15(e) or to delivery of the notice under proposed § 1041.15(d) if there are two consecutive failed withdrawal attempts that trigger the protections of § 1041.14.

15(a)(4)(ii)(A)

Proposed § 1041.15(a)(4)(ii)(A) would prohibit a lender from providing the notices required by proposed § 1041.15 through a particular electronic delivery method if the consumer revokes consent to receive electronic disclosures through that method. Proposed comment 15(a)(4)(ii)(A)-1 clarifies that a consumer may revoke consent for any reason and by any reasonable means of communication. The comment provides that examples of a reasonable means of communication include calling the lender and revoking consent orally, mailing a revocation to an address provided by the lender on its consumer correspondence, sending an email response or clicking on a revocation link provided in an email from the lender, and responding to a text message sent by the lender.

The Bureau is aware that burdensome revocation requirements could make it difficult for the consumer to revoke consent to receive electronic disclosures through a particular electronic delivery method. Accordingly, the Bureau believes it is appropriate to require that consent is revoked and lenders cannot provide the notices through a particular electronic delivery method if the consumer revokes consent through that method. The Bureau seeks comment on all aspects of this revocation requirement and on whether additional safeguards or clarifications would be useful. The Bureau seeks comment on whether certain methods of revocation are particularly burdensome for lenders to receive and whether the Bureau should further limit methods of revocation, and whether certain methods of revocation are particularly valuable to consumers.

15(a)(4)(ii)(B)

Proposed § 1041.15(a)(4)(ii)(B) would prohibit a lender from providing the notices required by proposed § 1041.15 through a particular electronic delivery method if the lender receives notice that the consumer is unable to receive disclosures through that method. Such notice would be treated in the same manner as if the consumer had affirmatively notified the lender that the consumer was revoking authorization to provide notices through that means of delivery. Proposed comment 15(a)(4)(ii)(B)-1 provides examples of notice, including a returned email, returned text message, and statement from the consumer.

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[849] Bd. of Governors of the Federal Reserve System, *Consumers and Mobile Financial Services*, at 2, 5 (2015), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf.*

The Bureau believes that this is an important safeguard to ensure that consumers have ongoing access to the notices required under proposed § 1041.15. This requirement to change delivery methods after consent has been lost helps ensure that the disclosure information is fully and effectively disclosed to consumers, consistent with the Bureau's authority under section 1032. As discussed further below, in the event that the lender receives such a notice, it would be required under proposed § 1041.15(b)(3) to deliver notices for any future payment attempts through alternate means, such as another method of electronic delivery that the consumer has consented to, in person delivery, or paper mail. The Bureau requests comment on this loss of consent provision, including whether there are other methods of loss of consent that should be discussed in the rule, and how frequently lenders who use electronic communication methods today receive such returns.

15(a)(5) Segregation Requirements for Notices

Proposed § 1041.15(a)(5) would provide that all notices required by proposed § 1041.15 must be segregated from all other written materials and contain only the information required by § 1041.15, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by proposed § 1041.15 must not be displayed above, below, or around the required content. Proposed comment 15(a)(5)-1 clarifies that additional, non-required content may be delivered through a separate form, such as a separate piece of paper or Web page.

In order to increase the likelihood that consumers would notice and read the written and electronic disclosures required by proposed § 1041.15, the Bureau is proposing that the notices should be provided in a stand-alone format that is segregated from other lender communications. This requirement would ensure that the disclosure contents are effectively disclosed to consumers, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act. Lenders would not be allowed to add additional substantive content to the disclosure. The Bureau solicits comment on these segregation requirements, including whether they provide enough specificity.

15(a)(6) Machine Readable Text in Notices Provided Through Electronic Delivery

Proposed § 1041.15(a)(5) would require, if provided through electronic delivery, that the payment notice required by proposed § 1041.15 (b) and the consumer rights notice required by proposed § 1041.15(d) must use machine readable text that is accessible via both Web browsers and screen readers. Graphical representations of textual content cannot be accessed by assistive technology used by the blind and visually impaired. The Bureau believes that providing the electronically-delivered disclosures with machine readable text, rather than as a graphic image file, would help ensure that consumers with a variety of electronic devices and consumers that utilize screen readers, such as consumers with disabilities, can access the disclosure information. The Bureau seeks comment on this requirement, including its benefits to consumers, the burden it would impose on lenders, and on how lenders currently format content delivered through a Web page.

15(a)(7) Model Forms

Proposed § 1041.15(a)(7) would require all notices in proposed § 1041.15 to be substantially similar to the model forms and clauses proposed by the Bureau. Proposed comment 15(a)(7)-1 explains the safe harbor provided by the model forms, providing that although the use of the model forms and clauses is not required, lenders using them would be deemed to be in compliance with the disclosure requirement with respect to such model forms. Proposed § 1041.15(a)(7)(i) would require that the content, order, and format of the payment notice be substantially similar to the Models Forms A-3 through A-5 in appendix A. Under proposed § 1041.15(a)(7)(ii), the consumer rights notice would have to be substantially similar to Model Form A-5 in appendix A. Similarly, proposed § 1041.15(a)(7)(iii) would mandate that the electronic short notices required under proposed § 1041.15(c) and (e) must be substantially similar to the Model Clauses A-6 through A-8 provided in appendix A.

The model forms developed through consumer testing may make the notice information comprehensible to consumers while minimizing the burden on lenders who otherwise would need to develop their own disclosures. Consistent with the Bureau's authority under section 1032(b)(1), the Bureau believes that its proposed model forms use plain language comprehensible to consumers, contain a clear format and design, such as an easily readable type font, and succinctly explain the information that much be communicated to the consumer. As described in the FMG Report, and as discussed above, the Bureau has considered evidence developed through its testing of model forms pursuant to section 1032(b)(3). The Bureau believes that providing these model forms would help ensure that the disclosures are effectively provided to consumers, while also leaving space for lenders to adapt the disclosures to their loan products and preferences. The Bureau seeks comment on the content, format, and design of these model forms.

15(a)(8) Foreign Language Disclosures

Proposed § 1041.15(a)(8) would allow lenders to provide the disclosures required by proposed § 1041.15 in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

The Bureau seeks comment in general on this foreign language requirement, including whether lenders should be required to obtain written consumer consent before for sending the disclosures in proposed § 1041.15 in a language other than English and whether lenders should be required to provide the disclosure in English along with the foreign language disclosure. The Bureau also seeks comment on whether there are any circumstances in which lenders should be required to provide the disclosures in a foreign language and, if so, what circumstance should trigger such a requirement.

15(b) Payment Notice

Proposed § 1041.15(b) would generally require that lenders provide to consumers a payment notice before initiating a payment transfer from a consumer's account with respect to a covered loan, other than loans made pursuant to proposed § 1041.11 and proposed § 1041.12. As defined in proposed § 1041.14(a), a payment transfer is any transfer of funds from a consumer's account that is initiated by a lender for the purpose of collecting any amount due or purported to be due in connection with a covered loan. The notice would contain special wording alerting the consumer when the upcoming withdrawal would involve changes in amount, timing, or channel from what the consumer would otherwise be expecting. The timing requirements would vary depending on the method of delivery, with the earliest date being six to 10 business days prior to the intended withdrawal for notices delivered by mail.

As discussed in Market Concerns—Payments, when a lender initiates a payment transfer for which the consumer's account lacks sufficient funds, the consumer can suffer a number of adverse consequences. The consumer's bank will likely charge an overdraft or NSF fee. If the payment is returned, the lender may also charge a returned payment or late fee. These fees can materially increase the amount the consumer is required to pay. Moreover, returned payments appear to increase the likelihood that the consumer's account will be closed.

The Bureau believes that the payment notice could help consumers mitigate these various harms by providing a timely reminder that a payment transfer will occur, the amount and expected allocation of the payment as between principal and other costs, and information consumers may need to follow up with lenders or their depository institutions if there is a problem with the upcoming withdrawal or if the consumer anticipates difficulty in covering the payment transfer.

The Bureau believes that the notice could have value as a general financial management tool, but would be particularly valuable to consumers in situations in which lenders intend to initiate a withdrawal in a way that deviates from the loan agreement or prior course of conduct between the parties. As detailed above, the Bureau is aware that some lenders making covered loans sometimes initiate payments in an unpredictable manner which may increase the likelihood that consumers will experience adverse consequences. Consumers have limited ability to control when or how lenders will initiate payment. Although paper checks specify a date and amount for payment, UCC Section 4-401(c) allows merchants to present checks for payment on a date earlier than the date on the check. Lenders sometimes attempt to collect payment on a different day from the one stated on a payment schedule. The Bureau has received complaints from consumers that have incurred bank account fees after payday and payday installment lenders attempted to collect payment on a different date from what was scheduled. The Bureau is also aware that lenders sometimes split payments into multiple pieces, make multiple attempts to collect in one day, add fees and charges to the payment amount, and change the payment method used to collect.

The Bureau is aware that these notices would impose some cost on lenders, particularly the payment notice which, under proposed § 1041.15(c), would be sent before each payment transfer. The Bureau considered proposing to require the payment notice only when the payment transfer would qualify as unusual, such as when there is a change in the amount, date, or payment channel. However, the Bureau believes that once lenders have built the infrastructure to send the unusual payment notices, the marginal costs of sending notices for all upcoming payments is likely to be relatively minimal. The Bureau notes that a number of lenders already have a similar infrastructure for sending payment reminders. Indeed, a trade association representing online payday and payday installment lenders has expressed support for upcoming payment reminders.[850] These lenders currently may choose to send out payment reminders before all payments initiated from a consumer's account. Others may be sending out notices for preauthorized electronic fund transfers that vary in amount in accordance with Regulation E § 1005.10(d), which requires payees to send a notice of date and amount ten days before a transfer that varies in amount from the previous transfer under the same authorization or from the preauthorized amount.

The Bureau seeks comment on whether the payment notice could be provided in another manner that would address the policy concerns discussed in this section. The Small Business Review Panel Report also recommended that the Bureau solicit feedback on whether there were ways to address the Bureau's policy concerns without requiring an upcoming payment disclosure before payment transfers that are consistent with the date and amount authorized by the consumer. The Bureau seeks comment on both the incremental burden and incremental benefit of providing the payment notice before all upcoming payment transfers, rather than just before unusual attempts. The Bureau also seeks comment on the extent lenders currently have the infrastructure to provide notices through text message, email, mobile application, and by mail. The Bureau invites comment on how lenders currently comply with the Regulation E requirement to provide notice of transfers varying in amount, including whether most lenders obtain authorizations for a wide range of amounts with the result of sending notices only when a transfer falls outside a specified range or only when a transfer differs from the most recent transfer by more than an agreed-upon amount and whether consumers are informed of their right to receive this notice in accordance with Regulation E § 1005.10(d)(2).

The Bureau also invites comment on the burdens and benefits from regular versus unusual notices. The Bureau particularly seeks comment on whether there would be some risk of desensitizing consumers to the notice by sending a version of it in connection with routine payments. Given this potential desensitization and that some consumers may prefer not to receive these regular upcoming payment notices, particularly for long-term loans that require many payment transfers, the Bureau seeks comment on whether this notice should provide a method for consumers to opt-out of receiving future upcoming payment notices. The Bureau also seeks comment on the burdens and benefits of providing a payment notice for a loan which is scheduled to be repaid in a single-payment due shortly after the loan is consummated, such as a two-week payday loan.

Proposed § 1041.15(b)(1) would set forth the basic disclosure requirement, while proposed § 1041.15(b)(2) would provide exceptions. Proposed § 1041.15(b)(3) would define timing requirements for this payment notice, including mailing paper notices 10 to six business days before initiating the payment transfer and sending notices by electronic delivery seven to three business days before initiating the transfer. Proposed § 1041.15(b)(4) would define content requirements for this payment notice, including transfer terms and payment breakdown. Proposed § 1041.15(b)(5) would provide additional content requirements for unusual payment transfers, including a statement describing why the transfer is unusual. Proposed § 1041.15(c) would provide content requirements for the electronic short form, which is required in situations where the lender is providing this payment notice through a method of electronic delivery.

15(b)(1) General

Except as provided in proposed § 1041.15(b)(2), proposed § 1041.15(b)(1) would require lenders to send a payment notice to a consumer prior to initiating a payment transfer from the consumer's account.

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[850] "Bank account overdrafts are a lose-lose for online lenders and their customers. It is in the customers best interests as well as the lenders best interest for customers to not incur overdrafts. This is why we support payment reminders so that customers do not overdraft their accounts." Lisa McGreevy, Online Lenders Alliance, OLA Releases Statement in Response to CFPB Online Loan Payment Study, (Apr. 20, 2016), *http://onlinelendersalliance.org/ola-releases-statement-in-response-to-cfpb-online-loan-payment-study/.*

15(b)(2) Exceptions

15(b)(2)(i)

Proposed § 1041.15(b)(2)(i) would except covered loans made pursuant to proposed § 1041.11 or proposed § 1041.12 from the payment notice requirement. The Bureau has limited evidence that lenders making payday alternative loans like those covered by § 1041.11 participate in questionable payment practices. Given the cost restrictions placed by the NCUA on payday alternative loans and on the loans conditionally exempt under proposed § 1041.12, it may be particularly difficult to build the cost of providing the payment disclosure into the cost of the loan. The Bureau is concerned that lenders may be unable to continue offering payday alternative loans or the loans encompassed by proposed § 1041.12 if the disclosure requirement is applied.

The Bureau seeks comment on these proposed exceptions. The Bureau invites comment on whether lenders currently offering payday alternative loans or relationship loans of the type covered by proposed § 1041.12 already provide a payment reminder to consumers and whether such an exception is necessary.

15(b)(2)(ii)

Proposed § 1041.15(b)(2)(ii) would provide a limited exception to the notice requirement for the first transfer from a consumer's account after the lender obtains the consumer's consent pursuant to proposed § 1041.14(c), regardless of whether any of the conditions in § 1041.15(b)(5) apply. As discussed above, proposed § 1041.14 would generally require a lender to obtain a consumer's consent before initiating another payment attempt on the consumer's account after two consecutive attempts have failed. Proposed § 1041.15(b)(2)(ii) would allow lenders to forgo the payment notice for the first payment attempt made under the consumer's affirmative consent as the consent itself will function like a payment notice. Proposed comment 15(b)(2)(ii)-1 clarifies that this exception applies even if the transfer would otherwise trigger the additional disclosure requirements for unusual attempts under proposed § 1041.15(b)(5). Proposed comment 15(b)(2)(ii)-2 explains that, when a consumer has affirmatively consented to multiple transfers in advance, this exception applies only to the first transfer.

Because the lender must provide precise information about the payment to be deducted from the account prior to obtaining the consumer's affirmative consent, the Bureau believes requiring a payment notice before executing the first funds transfer that the consumer has consented to would generally be unnecessary. This exception would apply only to the first transfer made under the consumer's new and specific consent in order to ensure that after the first payment, the consumer receives the benefits of the payment notices to minimize the risk that a payment transfer will adversely impact the consumer. This is especially important if the first attempt fails, so that the consumer has notice of the means by which the lender may attempt a second funds transfer.

The Bureau seeks comment on this proposed exception, including whether the exception is necessary and whether other exceptions might be appropriate for situations where the consumer has provided affirmative consent. The Bureau specifically seeks comment on whether this exception should not apply if fee has been added to the scheduled payment amount, or if the payment is otherwise for a varying amount as provided under proposed § 1041.15(b)(5)(i).

15(b)(2)(iii)

Proposed § 1041.15(b)(2)(iii) would provide an exception for an immediate single payment transfer initiated at the consumer's request as defined in § 1041.14(a)(5). This exception would carve out situations where a lender is initiating a transfer within one business day of receiving the consumer's authorization.

During the SBREFA process and other external outreach, lenders raised concerns about how the Bureau's potential proposal would apply to one-time, immediate electronic payments made at the consumer's request. Industry has expressed concern that, unless these payments are excepted from the requirement, lenders could be prohibited from deducting payments from consumers' accounts for several days in situations in which consumers have specifically directed the lender to deduct an extra payment or have given approval to pay off their loans early. Similarly, if an advance notice were required before a one-time payment, consumers attempting to make a last-minute payment might incur additional late fees due to the waiting period required after the disclosure. The Bureau believes that these are valid policy concerns and accordingly is proposing to except an immediate single payment transfer made at the consumer's request. The Bureau also believes that because this category of payments involves situations in which the consumer's affirmative request to initiate a transfer is processed within a business day of receiving the request, the consumer is unlikely to be surprised or unprepared for the subsequent withdrawal. The Bureau seeks comment on this proposed exception. In particular, the Bureau invites comment on whether this proposed exception is too broad and includes some transfers that should be subject to the payment disclosure.

15(b)(3) Timing

Proposed § 1041.15(b)(3) would provide the tailored timing requirements applicable to each of the three methods through which the payment notice can be delivered, which are mail, electronic, and in-person delivery. The minimum time to deliver the notice would range from six to three business days before the transfer, depending on the channel.

In proposing these requirements, the Bureau is balancing several competing considerations about how timing may impact consumers and lenders. First, the Bureau believes that the payment notice information is more likely to be useful, actionable, and effective for consumers if it is provided shortly before the payment will be initiated. Consumers could use this information to assess whether there are sufficient funds in their account to cover the payment and whether they need to make arrangements for another bill or obligation that is due around the same time. However, consumers also may need some time to arrange their finances, to discuss alternative arrangements with the lender, or to resolve any errors. For example, if the payment were not authorized and the consumer wanted to provide a notice to stop payment to their account provider in a timely fashion under Regulation E § 1005.10(c)(1), the regulation would require the consumer to take action three business days before the scheduled date of the transfer.

The Bureau is also aware that the delay between sending and receiving the notice complicates timing considerations. For example, paper delivery via mail involves a lag time of a few days and is difficult to estimate precisely. Finally, as discussed above, the Bureau believes that electronic delivery may be the least costly and most reliable method of delivery for many consumers and lenders. However, some consumers do not have access to an electronic means of receiving notices, so a paper option would be the only way for these consumers to receive the notices required under proposed

§ 1041.15(b). In light of these considerations, the Bureau believes that these timing requirements, which incorporate the delays inherent in various methods of delivery and the utility of the disclosure information for consumers, would help ensure that the content of the payment notice is effectively disclosed to consumers, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act.

The Bureau seeks comment on the proposed timing of the payment notice for each delivery method specified below and whether other delivery methods should be considered. The Bureau invites comment on whether the payment notice should be required to be delivered within a timeframe that allows consumers additional time to utilize their Regulation E stop payment rights if they choose to do so, such as a requirement to send the payment notice through electronic delivery no later than five days before the payment will be initiated, or whether the benefit of extra time would be outweighed by having consumers receive the notice relatively close to the payment date. The Bureau seeks comment on whether an earlier timeframe should be provided for notices delivered by mail, such as a timeframe of 8 to 12 days, to accommodate mail delays. The Bureau also invites comment on whether synchronizing the timing requirement for proposed § 1041.15(b)(3) with Regulation E § 1005.10(d) requirement that notice of transfers of varying amounts be delivered at least 10 days before the transfer date would ease compliance burden on lenders.

15(b)(3)(i) Mail

Proposed § 1041.15(b)(3)(i) would require the lender to mail the notice no earlier than 10 business days and no later than six business days prior to initiating the transfer. Proposed comment 15(b)(3)(i)-1 clarifies that the six-business-day period begins when the lender places the notice in the mail, rather than when the consumer receives the notice.

For a payment notice sent by mail, there may be a gap of a few days between when the lender sends the notice and when the consumer receives it. The Bureau expects that in most cases this would result in the consumer receiving the notice between seven business days and three business days prior to the date on which the lender intends to initiate the transfer. This expectation is consistent with certain provisions of Regulation Z, 12 CFR part 1026, which assume that consumers are considered to have received disclosures delivered by mail three business days after they are placed in the mail.

15(b)(3)(ii) Electronic Delivery

For a payment notice sent through electronic delivery along with the electronic short notice in proposed § 1041.15(c), consumers would be able to receive a notice immediately after it is sent and without the lag inherent in paper mail. Proposed § 1041.15(b)(3)(ii)(A) would therefore adjust the time frames and require the lender to send the notice no earlier than seven business days and no later than three business days prior to initiating the transfer. Proposed comment 15(b)(3)(ii)(A)-1 clarifies that the three-business-day period begins when the lender sends the notice, rather than when the consumer receives or is deemed to have received the notice.

Proposed § 1041.15(b)(3)(ii)(B) would require that if, after providing the payment notice through electronic delivery pursuant to the timing requirements in proposed § 1041.15(b)(3)(ii)(A), the lender loses a consumer's consent to receive notices through a particular electronic delivery method, the lender must provide the notice for any future payment attempt, if applicable, through alternate means. Proposed comment 15(b)(3)(ii)(B)-1 clarifies that in circumstances when the lender receives the consumer's loss of consent for a particular electronic delivery method after the notice has already been provided, the lender may initiate the payment transfer as scheduled. If the lender is scheduled to make any payment attempts following the one that was disclosed in the previously provided notice, the lender must provide notice for that future payday attempt through alternate means, in accordance with the applicable timing requirements in proposed § 1041.15(b)(3). Proposed comment 15(b)(3)(ii)(B)-2 explains that alternate means may include a different electronic delivery method that the consumer has consented to, in person, or by mail. Proposed comment 15(b)(3)(ii)(B)-3 provides examples of actions that would satisfy the proposed requirements in proposed § 1041.15(b)(3)(ii)(B).

The Bureau is concerned that requiring lenders to delay the payment transfer past its scheduled date could cause consumers to incur late fees and finance charges. For example, if the lender attempts to deliver a notice through text message three days before the transfer date and the lender receives a response indicating that the consumer's phone number is out of service, the lender would not have sufficient time before the scheduled payment transfer date to deliver to payment notice by mail according to the timing requirements in proposed § 1041.15(b)(3)(i). Although it would be preferable that consumers received the notice before any transfer in all circumstances, on balance the Bureau believes that the potential harms of causing payment delays outweighs the benefits of requiring that the notice be delivered through another method. The Bureau is concerned that even if lenders were required to deliver the notice through another means, such as mail, that alternative means also may not successfully deliver the notice to the consumer. The Bureau seeks comment on this approach, which would allow lenders to initiate a payment transfer as scheduled in situations when the lender learns of revocation or loss of consent for a particular electronic delivery method after the notice has already been provided. The Bureau also seeks comment on alternative approaches to this payment transfer delay issue.

15(b)(3)(iii) In Person

If a lender provides the payment notice in person, there would be no lag between providing the notice and the consumer's receipt. Similar to the timing provisions provided for the electronic short notice, proposed § 1041.15(b)(3)(iii) would provide that if the lender provides the notice in person, the lender must provide the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.

The Bureau seeks comment on whether a broader time window should be provided for in-person notices in order to accommodate short-term, single payment loans. The Bureau is aware that for loans with terms of less than two weeks the date of the payment transfer is not far from the origination date. The Bureau seeks comment on whether allowing an in-person notice to be provided up to 14 days before the payment transfer date would ease lender burden requirements and whether extending the time frame would decrease the benefit of the notice to consumers.

15(b)(4) Content Requirements

Proposed § 1041.15(b)(4) would specify the required contents of the payment notice, including an identifying statement, date and amount of the transfer, truncated information to identify the consumer account from which the withdrawal will be taken, loan number, payment channel, check number (if applicable), the annual percentage rate of the loan, a breakdown of how the payment is applied to principal and fees, and lender contact information. When the payment transfer has changed in a manner that makes the attempt unusual, proposed § 1041.15(b)(4) would require the disclosure title to reflect that the attempt is unusual.

The Bureau believes that this content would enable consumers to understand the costs and risks associated with each loan payment, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act. The Bureau is aware that providing too much or overly complicated information on the notice may prevent consumers from reading and understanding the notice. To maximize the likelihood that consumers would read the notice and retain the most importance pieces of information about an upcoming payment, the Bureau believes that the content requirements should be minimal.

In particular, the Bureau considered adding information about other consumer rights, such as stop payment rights for checks and electronic fund transfers, but has concerns that this information may be complicated and distracting. Consumer rights regarding payments are particularly complicated because they vary across payment methods, loan contracts, and whether the authorization is for a one-time or recurring payment. As discussed in Market Concerns—Payments, these rights are often burdensome and costly for consumers to utilize.

The Bureau seeks comment on these content requirements as individually detailed below, in particular the inclusion of consumer account information, annual percentage rate or another measure of cost, and the manner of disclosing payment breakdown. The Bureau specifically seeks comment on whether the upcoming payment notice should advise consumers to notify their lender or financial institution immediately if the payment appears to have an error or be otherwise unauthorized. The Bureau also seeks comment about whether information about the CFPB should be required on the notice, such as a link to CFPB web content on payday loans.

15(b)(4)(i) Identifying Statement

Proposed § 1041.15(b)(4)(i) would require an identifying statement to alert the consumer to the upcoming payment transfer, whether the transfer is unusual, and the name of the lender initiating the transfer. Specifically, proposed § 1041.15(b)(4)(i)(A) would require, in situations that do not qualify as unusual according to proposed § 1041.15(b)(5), that the payment notice contain the identifying statement "Upcoming Withdrawal Notice," using that phrase, and, in the same statement, the name of the lender. If the unusual attempt scenarios outlined in proposed § 1041.15(b)(5) apply, proposed § 1041.15(b)(4)(i)(B) would require that the payment notice contain the identifying statement "Alert: Unusual Withdrawal," using that phrase, and, in the same statement, the name of the lender. In both cases, the language would have to be substantially similar to the language provided in proposed Model Forms A-3 and A-4 in appendix A.

The Bureau believes that this basic information identifying the purpose of the notice and the lender providing the notice would avoid information overload, help show the legitimacy of the notice, and provide a strong motivation for consumers to read the disclosures. The Bureau seeks comment on whether other information is sufficiently critical to consumer awareness that it should be required in the heading.

15(b)(4)(ii) Transfer Terms

15(b)(4)(ii)(A) Date

Proposed § 1041.15(b)(4)(ii)(A) would require the payment notice to include the date that the lender will initiate the transfer. Proposed comment 15(b)(4)(ii)(A)-1 clarifies that the initiation date is the date that the payment transfer is sent outside of the lender's control. Accordingly, the initiation date of the transfer is the date that the lender or its agent—such as a payment processor—sends the payment to be processed by a third party.

The Bureau realizes that different payment channels have different processing times, and that communications between parties in the chain can also affect timelines. On balance, the Bureau believes that notice of the date that the payment will be initiated would provide the consumer with the best reasonable and consistent estimate across different payment channels of the date by which the consumer must have funds in the account in order for the payment to go through and also would allow the consumer greater opportunity to mitigate potential harms from an unauthorized or unanticipated debit attempt from the consumer's account. The Bureau believes that, in general, lenders making covered loans initiate payments in accordance with the terms of the loans. In cases when lenders initiate payment in accordance with the terms of the loans, the notice would provide a valuable reminder that could enable the consumer to have funds available if the consumer is able to do so or to contact the lender to make alternative arrangements if the consumer would not be able to cover the payment.

At the same time, as discussed in Market Concerns—Payments, consumer complaints, Bureau analysis of online lender ACH payments and supervisory information show that some lenders may debit a consumer's account at irregular times resulting in early collection of funds, overdraft fees, or fees for returned payments. Lenders also may debit a consumer's account soon after an initial attempt fails—sometimes making multiple attempts over a short period of time—or months after the original payment attempt failed. Providing the date of the initiation in the payment notice would alert consumers when this occurs.

The Bureau solicits comment on requiring the lender to include the date that the lender will initiate the transfer in the notice and whether there is an alternative date that would be more useful for consumers and knowable to lenders. For example, the Bureau solicits comment on whether the lender should include in the notice the initiation date, the date the lender expects the payment transfer to reach the consumer's depository institution, or the earliest possible date that funds may be taken out of the consumer's account.

15(b)(4)(ii)(B) Amount

Proposed § 1041.15(b)(4)(ii)(B) would require the payment notice to include the dollar amount of the transfer. Proposed comment 15(b)(4)(ii)(B)-1 explains that the amount of the transfer is the total amount of money that the lender will seek to transfer from the consumer's account, regardless of whether the total corresponds to the amount of a regularly scheduled payment.

The Bureau believes that disclosing the amount of the transfer would help consumers to arrange their finances, check for accuracy, and take action if there is an error. Consumers may not anticipate the amount of the payment. Consumers sometimes forget about recurring payments and preauthorized debits. Sometimes the consumer may not be able to anticipate the payment amount because the lender changes it unexpectedly, makes an error, or never received authorization. Many loan agreements provide the lender the right to collect payments for amounts that vary within a range authorized by the consumer. As discussed above in Market Concerns—Payments, Bureau analysis of online lender ACH payments, consumer complaints, enforcement actions, and publicly available data demonstrate that payment amounts on a single loan can fluctuate widely, with some lenders breaking down payments into small pieces, collecting a large amount with the addition of fees or other charges, or trying different amounts over a short period of time. Consumers need to know the amount of a payment transfer to assess whether the amount is erroneous or unauthorized and, if so, how best to respond, and to take any steps they can to ensure that sufficient funds are in the account. Given that banks typically require the consumer to identify an exact payment amount in order to place a stop payment order, these disclosing the exact amount of the payment transfer would enable consumers to understand the cost and take appropriate actions.

15(b)(4)(ii)(C) Consumer Account

Proposed § 1041.15(b)(4)(ii)(C) would require the payment notice to include sufficient information to permit the consumer to identify the account from which the funds will be transferred, but, to address privacy concerns, would expressly prohibit the lender from providing the complete account number of the consumer. A truncated account number similar to the one used in Model Form A-3 in appendix A to proposed part 1041 would be permissible.

The Bureau believes that information that identifies the account that the payment would be initiated from, such as the last 4 digits of the account number, may help consumers evaluate the legitimacy of the notice and take appropriate action such as making a deposit in the affected account as warranted. During the Bureau's consumer testing, participants repeatedly pointed to the account information as a reason to believe that the notice was legitimate. The Bureau expects that most often the account information would reference the account to which the consumer provided authorization. However, the Bureau is aware that some lenders take authorization to debit any account associated with a consumer and would initiate payments from an account different from the one the consumer initially authorized. The Bureau believes that providing some account identification information would help consumers determine the legitimacy of the notice and show whether the account being used is the one that they expected. However, the Bureau is also aware that the consumer's full account number is sensitive information that can be used to initiate fund transfers from a consumer's account. The Bureau believes that providing the last four digits of the account number, as provided in the Model Form, would provide sufficient identification information while protecting the sensitive nature of the account number.

The Bureau seeks comment on whether the truncated format of the account number would sufficiently protect the consumer's account and whether this information should be disclosed in another manner. The Bureau also seeks comment on whether it should prohibit lenders from providing the entire account number in the disclosure.

15(b)(4)(ii)(D) Loan Identification Information

Proposed § 1041.15(b)(4)(ii)(D) would require the payment notice to include sufficient information to permit the consumer to identify the covered loan associated with the transfer. As observed in the Bureau's consumer testing, information identifying the loan number that the payment will be applied to could help consumers evaluate the legitimacy of the notice. This information also may be useful if the consumer contacts the lender about the payment. Since a loan number cannot be used to transfer funds out of a consumer's depository account, the Bureau does not believe that the loan number is likely to raise the same kind of privacy concerns as the consumer's deposit account number. The Bureau seeks comment on the scope and degree of any such concerns and whether a truncated number would be more appropriate.

15(b)(4)(ii)(E) Payment Channel

Proposed § 1041.15(b)(4)(ii)(E) would require that the payment notice include the payment channel of the transfer. Proposed comment 15(b)(4)(ii)(E)-1 clarifies that payment channel refers to the specific network that the payment is initiated through, such as the ACH network. Proposed comment 15(b)(4)(ii)(E)-2 provides examples of payment channel, including ACH transfer, check, remotely created payment order, internal transfer, and debit card payment.

The information required to be provided by proposed § 1041.15(b)(4)(ii), as discussed above, would provide the consumer with the information needed to assess whether the transfer the lender intends to initiate is an authorized transfer that accords with the terms of the consumer's loan. If the consumer determines this is not the case, the consumer may wish to instruct her bank to withhold payment. However, the consumer may not know which payment channel the lender will use for a particular attempt, information that determines certain rights afforded to the consumer and that is required to stop payment. For example, it may sometimes be unclear to consumers whether a post-dated check will be processed as in its original form as a signature check or used as a source document for an ACH transfer or remotely created check. As discussed above in part II.D., some lenders take authorizations for multiple payment types and alternate methods throughout the life of the loan.

The Bureau seeks comment on the definition of payment channel. The Bureau invites comment on whether more examples are needed and whether specific language for disclosing each payment channel should be required. The Bureau specifically seeks comment on whether consumers would benefit from being provided with greater detail in regards to debit card payments, such as whether the payment is being submitted through the PIN debit network or the credit card network.

15(b)(4)(ii)(F) Check Number

For signature or paper checks, remotely created checks, and remotely created payment orders, proposed § 1041.15(b)(4)(ii)(F) would require that the payment notice include the check number of the transfer.

Check numbers for RCCs and RCPOs are generated by the lender or its payment processor. Consumers currently cannot know the RCC or RCPO check number until after the payment has been processed. These payments are particularly difficult for a consumer's bank to stop because the bank needs a check number to block the debit on an automated basis. Providing the check number to the consumer would allow the consumer a better opportunity to stop payment on RCCs and RCPOs where, for example, the consumer believes that the payment the lender will be attempting is unauthorized. A consumer also may forget the number of the paper check provided to the lender, so the check number for signature checks could be valuable information for consumers seeking to stop those payments.

15(b)(4)(iii) Annual Percentage Rate

Proposed § 1041.15(b)(4)(iii) would require that the payment notice contain the annual percentage rate of the covered loan, unless the transfer is for an unusual attempt described in proposed § 1041.15(b)(5).

The Bureau believes that providing information about the cost of the loan in the disclosure would remind consumers of the cost of the product over its term and assist consumers in their financial management, for instance in choosing how to allocate available funds among multiple credit obligations or in deciding whether to prepay an obligation. The Bureau recognizes that consumers generally do not have a clear understanding of APR. This was confirmed by the consumer testing of these model forms. APR nonetheless may have some value to consumers as a comparison tool across loan obligations even by consumers who are not deeply familiar with the underlying calculation. Furthermore, because the APR is disclosed at consummation, disclosing a different metric with the payment notices could create consumer confusion.

The Bureau is not proposing to require the disclosure of the APR in a notice alerting consumer to an unusual payment attempt. Given that the purpose of the unusual payment notice is to alert consumers that the payment has changed in a way that they might not expect, the Bureau believes that the APR information may distract consumers from the more important and time-sensitive message.

The Bureau seeks comment on this APR requirement, including whether this content should be required and whether a different measure of cost should be included.

15(b)(4)(iv) Payment Breakdown

Proposed § 1041.15(b)(4)(iv) would require that the payment notice show, in a tabular form, the heading "payment breakdown," principal, interest, fees (if applicable), other charges (if applicable), and total payment amount. For an interest only or negatively amortizing payment, proposed § 1041.15(b)(4)(iv)(G) would also require a statement explaining that the payment will not reduce principal, using the applicable phrase "When you make this payment, your principal balance will stay the same and you will not be closer to paying off your loan" or "When you make this payment, your principal balance will increase and you will not be closer to paying off your loan."

Proposed comment 15(b)(4)(iv)(B)-1 explains that amount of the payment that is applied to principal must always be included in the payment breakdown table, even if the amount applied is $0. In contrast, proposed comment 15(b)(4)(iv)(D)-1 clarifies that the field for "fees" must only be provided if some of the payment amount will be applied to fees. In situations where more than one fee applies, fees may be disclosed separately or aggregated. The comment further provides that a lender may use its own term to describe the fee, such as "late payment fee." Similarly, proposed comment 15(b)(4)(iv)(E)-1 clarifies that a field for "other charges" must only be provided if some of the payment amount will be applied to other charges. In situations when more than one other charge applies, other charges may be disclosed separately or aggregated. A lender may use its own term to describe the charge, such as "insurance charge."

The Bureau is aware that some consumers do not realize how their payments are being applied to their outstanding loan balance. Consumer complaints indicate that there is particular confusion about loans with uneven amortization structures, such as loans that start with interest-only payments and later switch to amortizing payments. Some consumers with such loans have complained that they did not understand that their payments were being applied in this manner. During the Bureau's consumer testing, an example of an interest-only payment was provided to participants. Although participants were not asked directly about the amortization structure of the loan, several noticed the interest-only application and expressed alarm. Providing information about the application of the payment to principal, interest, fees, and other charges, along with a statement indicating if a payment will not reduce principal, could help consumers understand the amortization structure of their loans and determine whether they may want to change their payments on the loan, such as by prepaying the loan balance. This requirement is similar to the explanation of amount due provision for periodic statements under Regulations Z 12 CFR 1026.41(d)(2). The Bureau believes that showing fees, interest, and other charges separately may help consumers more accurately understand how their payment is being applied to their loan balance. The Bureau believes that this information could more effectively disclose the costs of the loan, consistent with the Bureau's authority under section 1032(a) of the Dodd-Frank Act.

The Bureau seeks comment on this payment breakdown table, including the benefits and burdens of providing each individual field. The Bureau specifically seeks comment on both the compliance burden involved in requiring the information to be provided in tabular format and the potential benefits and risks to consumer understanding in using such a format. As discussed in more detail below, the Bureau is proposing in connection with electronic delivery of notices that the table information would not be required for the electronic short notices delivered by text message, mobile application, or email, in part because of concerns that the formatting would not be practicable for all channels.

15(b)(4)(v) Lender Name and Contact Information

Proposed § 1041.15(b)(4)(v) would require the payment notice to include the name of the lender, the name under which the transfer will be initiated (if different from the consumer-facing name of the lender), and two different forms of lender contact information that may be used by the consumer to obtain information about the consumer's loan.

Lender name and contact information may support the legitimacy of the notice and may be useful if consumers wish to contact the lender about a payment attempt. Other rules require the disclosure of two methods of contact information, such as the mailing address and telephone number requirement in Regulation E § 1005.7(b)(2) in the context of providing consumer assistance with unauthorized transfers. During the Bureau's consumer testing, participants cited the lender contact information and name as a mark of legitimacy. Lender contact information would also be helpful to consumers if they believe they will have difficulty covering the payment, if they believe that there is an error, or if they want to ask questions relating to managing the costs and risks of their covered loan. Indeed, when asked what they would do if they had questions, testing participants often explained that they would contact the lender using the information provided on the notice. Some participants expressed a preference for contacting the lender by telephone.

The Bureau seeks comment on all aspects of this contact information requirement. The Bureau specifically seeks comment on whether additional or specific methods of contact information should be required and whether lenders currently operate with or without having all of these methods of contact available to their customers.

15(b)(5) Additional Content Requirements for Unusual Attempts

If the payment transfer is unusual according to the circumstances described in proposed § 1041.15(b)(5), proposed § 1041.15(b)(5) would require the payment notice to contain both the content provided in proposed § 1041.15(b)(4) (other than disclosure of the APR) along with the content required by § 1041.15(b)(5). Specifically, proposed § 1041.15(b)(5)(i) would require the notice to state, if the amount differs from the amount of the regularly scheduled payment, that the transfer will be for a larger or smaller amount than the regularly scheduled payment, as applicable. Proposed § 1041.15(b)(5)(ii) would require the notice to state, if the payment transfer date is not a date on which a regularly scheduled payment is due under the loan agreement, that the transfer will be initiated on a date other than the date of a regularly scheduled payment. For payment attempts using a payment channel different from the channel used for the previous transfer, proposed § 1041.15(b)(5)(iii) would require a statement that the transfer will be initiated through a different payment channel and require the lender to state the channel used for the previous payment attempt. Finally, if the transfer is for the purpose of re-initiating a returned transfer, proposed § 1041.15(b)(5)(iv) would require the notice to state that it is a re-initiation along with a statement of the date and amount of the returned transfer and a statement of the reason for the return.

Proposed comment 15(b)(5)-1 explains if the payment transfer is unusual according to the circumstances described in proposed § 1041.15(b)(5), the payment notice must contain both the content required by proposed § 1041.15(b)(4), except for APR, and the content required by proposed § 1041.15(b)(5). Proposed comment 15(b)(5)(i)-1 explains that the varying amount content requirement applies when a transfer is for the purpose of collecting a payment that is not specified by amount on the payment schedule or when the transfer is for the purpose of collecting a regularly scheduled payment for an amount different from the regularly scheduled payment amount according to the payment schedule. Proposed comment 15(b)(5)(ii)-1 explains that the date other than due date content requirement applies when a transfer is for the purpose of collecting a payment that is not specified by date on the payment schedule or when the transfer is for the purpose of collecting a regularly scheduled payment on a date that differs from regularly scheduled payment date according to the payment schedule.

The Bureau believes that all four of these circumstances—varying amount, date, payment channel and re-initiating a returned transfer—may be important to highlight for the consumer, so that the status of their loan is fully disclosed to them pursuant to section 1032(a) of the Dodd-Frank Act. If a lender is initiating a payment that differs from the regularly scheduled payment amount authorized by the consumer, the payment is more likely to vary from consumer expectations and pose greater risk of triggering overdraft or non-sufficient funds fees. The Bureau believes that these changes should be highlighted for consumers to understand the risks, attempt to plan for changed payments, and determine whether their authorization is being used appropriately. The Bureau believes that changes in the date and channel of the payment may also be important information for the consumer to prepare for the withdrawal and take steps as necessary. In order to effectively and fully understand their current loan status and alert to consumers to a series of repeat attempts over a short period of time, the Bureau believes that it is also important for the consumer to know if the past payment attempt failed and the lender is attempting to re-initiate a returned transfer.

The Bureau invites comment on whether additional situations should qualify as unusual under proposed § 1041.15(b)(5). The Bureau also seeks comment on whether, in circumstances when the payment amount is different from the regularly scheduled payment amount, the unusual payment notice should state the amount of the regularly scheduled payment that the transfer deviates from.

15(c) Electronic Short Notice

15(c)(1) General

Proposed § 1041.15(c) would provide content requirements for an electronic short notice, which would be a truncated version of the payment notice formatted for electronic delivery through email, text message, or mobile application. This notice must be provided when the lender has obtained the consumer consent for an electronic delivery method and is proceeding to provide notice through such a delivery method. As described above, this electronic short notice would provide a web link to the complete payment notice that would be required by proposed § 1041.15(b)(4) and proposed § 1041.15(b)(5).

To maximize the utility of notices for consumers and minimize the burden on lenders, the Bureau believes that the electronic short notices proposed by § 1041.15(c) should be formatted in consideration of their delivery method. These requirements for tailored content and formatting are consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act to prescribe rules that ensure that the loan features are effectively disclosed to consumers. The Bureau has attempted to tailor the proposed requirements both in light of format limitations for such electronic delivery channels that may be beyond the lenders' control, as well as considerations regarding the ways in which consumers may access email, text messages, and mobile applications that affect privacy considerations, their preferences for particular usage settings, and other issues. For example, text messages and email messages that are read on a mobile device would not have much screen space to show the notice content. Format limitations may make disclosure of information in a tabular format particularly difficult and character limits for text messages could require the full notice content to be broken into multiple chunks for delivery in a way that would substantially decrease the usefulness of the information to consumers while potentially increasing costs for both consumers and lenders.

While these concerns are most extreme with regard to text messaging, the Bureau believes that they may also carry over to email where consumers access their email via mobile device. Accordingly, the Bureau is proposing to limit the content of notices delivered by email to maximize screen readability without requiring the consumer to repeatedly scroll across or down. In addition, email providers may have access to consumer emails and may scrape the email content for potential advertising or other services; the Bureau believes that limiting the email content would help minimize such access.

For all of these reasons, the Bureau believes that it is appropriate for the electronic short notice to contain less information than the full payment notice given that it links to the full notice. As discussed further below, the Bureau believes that providing access to the full notice via the Web site link would appropriately balance related concerns to ensure that consumers could access the full set of notice information in a more secure, usable, and retainable manner. The Bureau seeks comment on this proposed electronic short notice, including whether additional information should be excluded from the truncated notice. The Bureau seeks comment in particular on whether the readability and privacy concerns for email are outweighed by concerns that requiring consumers to click through to the Web site to access the full notice information will make it less likely that consumers receive the full benefit of the information.

15(c)(2) Content

The electronic short notice would contain an abbreviated version of the payment notice content in proposed § 1041.15(b)(4). The electronic short notice would be an initial notice provided through a method of electronic delivery that the consumer has consented to, such as a text message or email, that would provide a link to a unique URL containing the full payment notice.

15(c)(2)(i) Identifying Statement

Proposed § 1041.15(c)(2)(i) would require the electronic short notice to contain an identifying statement that describes the purpose of the notice and the sender of the notice, as described in proposed § 1041.15(b)(4)(i). Proposed comment 15(c)(2)-1 explains that when a lender provides the electronic short notice by email, the identifying statement must be provided in both the subject line and the body of the email.

15(c)(2)(ii) Transfer Terms

The electronic short notice contains less information about the specific elements of the transfer terms than the payment notice content provided in proposed § 1041.15(b)(4). Proposed § 1041.15(c)(2)(ii) would require the electronic short notice to show the date of the transfer, amount of the transfer, and consumer account information. These terms are described for the full payment notice in proposed § 1041.15(b)(4)(ii)(A), (B), and (C).

The Bureau believes that the date and the amount of the transfer are the most important pieces of information for the consumer to understand the costs and risks of the forthcoming payment transfer and take appropriate action. Additionally, participants in the Bureau's consumer testing expressed comfort with the legitimacy of the notice due to its inclusion of the consumer's account information. Accordingly, the Bureau believes that this should be required as well in the electronic short notice. Consumers would be able to obtain all of the information contained in the full disclosure by accessing the link contained in the electronic short notice. The Bureau seeks comment on the information included in the electronic short notice.

15(c)(2)(iii) Web Site URL

Proposed § 1041.15(c)(2)(iv) would require the electronic short notice to provide a unique Web site URL that the consumer may use to access to the full payment notice described in proposed § 1041.15(b).

The Bureau believes that consumers should have access to the full notice content, but also understands the format restrictions of mobile devices and text message may limit the utility of providing all of this information through electronic delivery. Through this proposed two-step electronic delivery process, the Bureau is attempting to balance information access with these format considerations. However, the Bureau realizes that this proposed solution may not perfectly accommodate all consumers. The Bureau is aware that some consumers may not have internet capability on their phones and may not be able to open up the Web site when they receive a text message. Some of these consumers may have other means of accessing the internet and thus will be able to use the URL to access the full disclosure on some other device. For those consumers with no means of internet access (and who nonetheless consent to receive electronic disclosures), the Bureau believes that the truncated payment notice information, which takes into account the formatting and character limits of text messages, still provides useful information. If the information in the electronic short notice is inconsistent with the consumer's expectations, the consumer could reach out to the lender for additional information or assistance.

The Bureau understands that the unique Web site URL contains limited privacy and security risks because it would be unlikely that a third party will come across a unique URL. Even if a third party did discover this URL, the notice does not contain sensitive information such as the consumer's name or full account number. The Bureau seeks comment on the burden on lenders of hosting, posting, and taking down notices on a Web page. It also seeks comment on alternative methods of electronic delivery that may be less burdensome.

The Bureau invites comment on the proposed two-step disclosure process for electronic delivery, including whether the Web site link to the full payment notice introduces significant privacy concerns and whether more secure options for electronic delivery are available. The Bureau requests comment on whether, in the interest of consumer privacy, it should prohibit lenders from providing the consumer's name on the full notice when it is provided through a linked URL. The Bureau is aware that there may be additional methods of providing the disclosures required by § 1041.15. The Bureau specifically seeks comment on whether it should allow lenders to provide the full notice through an email attachment or text message attachment to the short electronic notice, rather than using the linked URL process.

15(c)(3) Additional Content Requirements

If the electronic short notice is being provided under an unusual attempt scenario, as described in proposed § 1041.15(b)(5), the notice would have to state what makes the payment attempt unusual. Proposed § 1041.15(c)(3) would require the electronic short notice to contain information about whether the amount, date, or payment channel has changed. These terms are described for the full payment notice in § 1041.15(b)(5) (i) through (iv).

The Bureau believes that the explanation of how the transfer may differ from the consumers' expectation is important information that needs to be included in the electronic short notice in order for the notice to be effective, pursuant to section 1032 of the Dodd-Frank Act. As discussed above, when a payment differs from the consumer's expectations, the payment may pose greater risk of triggering overdraft or non-sufficient funds fees.

15(d) Consumer Rights Notice

15(d)(1) General

Proposed § 1041.15(d) would require lenders to provide consumers with a consumer rights notice after a lender has initiated two consecutive or concurrent failed payment transfers and triggered the protections provided by proposed § 1041.14(b). Proposed § 1041.15(d)(2) would provide timing requirements for this consumer rights notice, which would be triggered when the lender receives information that the lender's second consecutive payment attempt has failed. Proposed § 1041.15(d)(3) details content requirements. Proposed § 1041.15(e) would provide content requirements for the electronic short form of the notice, which would be required in situations where the lender is providing this consumer rights notice through a method of electronic delivery.

As described above, proposed § 1041.14 would limit a lender's ability to initiate a payment transfer after two consecutive attempts have failed, allowing the lender to initiate another payment attempt from the consumer's account only if the lender received the consumer's consent under proposed § 1041.14(c) or authorization to initiate an immediate one-time transfer at the consumer's request under proposed § 1041.14. The Bureau believes that consumers should be informed when a lender has triggered proposed § 1041.14 so that consumers are made aware of the failed attempts and of the fact that by operation of law further attempts will cease even though consumers remain obligated to make continuing loan payments. The Bureau is also concerned that some lenders would pressure consumers to provide affirmative consent and could present the reasons behind the re-initiation limit in an incomplete manner. Requiring disclosure of prior failed payments and consumer rights under proposed § 1041.14 would ensure that the costs, benefits, and risks, of the loan and associated payments are effectively disclosed to consumers, consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act. Due to these policy considerations, the Bureau believes that a lender should be required to provide a standardized consumer rights notice after it has initiated two consecutive failed withdrawals.

The Bureau seeks comment on the proposed content and timing requirements of the consumer rights notice.

15(d)(2) Timing

Proposed § 1041.15(d)(2) would require a lender to send the consumer rights notice no later than three business days after the lender receives information that the second consecutive attempt has failed. Proposed comment 15(d)(2) clarifies that this timing requirement is triggered whenever the lender or its agent, such as a payment processor, receives information that the payment transfer has failed.

When a lender has initiated two consecutive failed payment transfers and triggers the protections provided by proposed § 1041.14(b), a consumer may not be aware that the lender is no longer permitted to initiate payment from the consumer's account. In the meantime, some loans may accrue interest or fees while the balance remains unpaid. For these reasons, the Bureau believes that the consumer rights notice should be provided shortly after the second attempt fails. However, the Bureau is aware that, depending on the payment method, there may be a delay between the lender's initiation of the payment transfer and information that the payment transfer has failed. Accordingly, the Bureau is proposing that the lender be required to send the consumer rights notice within three business days after the lender receives information that the payment transfer has failed.

The Bureau seeks comment on this timing requirement, including whether it is appropriate in length and whether it accommodates all payment channels. The Bureau invites comment on whether this timing requirement should be included, or whether the requirement for lenders to provide the consumer rights notice before obtaining a consumer's reauthorization under proposed § 1041.14(b) would provide sufficient consumer protection.

15(d)(3) Content Requirements

Proposed § 1041.15(d)(3) would provide the content requirements for the consumer rights notice. The Bureau believes that a consumer should know that a lender has triggered the provisions in proposed § 1041.14 and is no longer permitted to initiate payment from the consumer's account. The Bureau believes that it may be important to inform consumers that Federal law prohibits the lender from initiating payments. Given that proposed § 1041.14 would prohibit the lender from initiating another payment attempt without a new consumer authorization, the Bureau believes it would also be useful to note that the lender may be contacting the consumer to discuss payment choices. Consistent with the Bureau's authority under section 1032(a) of the Dodd-Frank Act, this content would inform consumers of the payment status on their covered loans and may help prevent consumer confusion or misinformation about why the lender cannot initiate another payment, helping to ensure that this information is effectively, accurately, and fully disclosed to the consumer.

15(d)(3)(i) Identifying Statement

Proposed § 1041.15(d)(3)(i) would require a statement that the lender, identified by name, is no longer permitted to withdraw loan payments from the consumer's account. The Bureau believes that a heading explaining that a lender is no longer permitted to withdraw payments would inform a consumer both that there is an issue with their payment and that the lender has an external requirement to stop any further attempts.

15(d)(3)(ii) Last Two Attempts Were Returned

Proposed § 1041.15(d)(3)(ii) would require a statement that the lender's last two attempts to withdraw payment from the consumer's account were returned due to non-sufficient funds. The Bureau believes that this information should be provided to the consumer early on in the notice because it provides context for why the consumer is receiving the notice.

15(d)(3)(iii) Consumer Account

Proposed § 1041.15(d)(3)(iii) would require the notice to include sufficient information to permit the consumer to identify the account from which the unsuccessful payment attempts were made, but would expressly prohibit the lender from providing the complete account number of the consumer to address privacy concerns. A truncated account number similar to the one used in Model Form A-5 in appendix A to proposed part 1041 would be permissible.

As discussed in the analysis of proposed § 1041.15(b)(4)(ii)(C), the Bureau believes that providing some consumer account information, such as the last four digits of the account, would be helpful for consumers to recognize the legitimacy of a notice. This information may also be useful for checking that the correct account was debited. However, the Bureau is also aware that the consumer's full account number is sensitive information. The Bureau believes that providing the last four digits of the account number, as provided in the Model Forms, would provide sufficient information for the consumer to identify the account while protecting the sensitive nature of the account number.

The Bureau seeks comment on the truncated format of the account number and the benefits and burdens of providing consumers with account identifying information after two payment attempts have failed.

15(d)(3)(iv) Loan Identification Information

Proposed § 1041.15(d)(3)(iv) would require the consumer rights notice to include sufficient information to permit the consumer to identify the covered loan associated with the unsuccessful payment attempts. Information that identifies the loan number may help consumers evaluate the legitimacy of the notice and also may be useful if the consumer contacts the lender about the information in the notice.

15(d)(3)(v) Statement of Federal Law Prohibition

Proposed § 1041.15 (d)(3)(v) would require the consumer rights notice to state, using that phrase, that in order to protect the consumer's account, Federal law prohibits the lender from initiating further payment transfers without the consumer's permission.

The Bureau believes that explaining how this re-initiation limit is a requirement under Federal law will help clarify the reason behind the notice, including how this limit is being imposed as a consumer protection. This information would help ensure that certain risks of the loan and associated payments are consistently and accurately disclosed to consumers, according to the Bureau's authority under section 1032 of the Dodd-Frank Act. The Bureau seeks comment on this proposed statement of Federal law prohibition, including the breadth and benefit of the statement and its location within the consumer rights notice.

15(d)(3)(vi) Contact About Choices

Proposed § 1041.15(d)(3)(vi) would require a statement that the lender may contact the consumer to discuss payment choices going forward. The Bureau believes that a statement that the lender may contact the consumer about payment choices would prepare the consumer for future contact from the lender.

15(d)(3)(vii) Previous Unsuccessful Payment Attempts

Proposed § 1041.15(d)(3)(vii) would require that the consumer rights notice show, in a tabular form, the heading "previous payment attempts," the scheduled due date of each previous unsuccessful payment transfer attempt, the date each previous unsuccessful payment transfer attempt was initiated by the lender, the amount of each previous unsuccessful payment transfer attempt, and any lender-charged fees associated with each unsuccessful attempt, if applicable, with an indication that these fees were charged by the lender.

The Bureau believes that showing the information about the prior unsuccessful attempts would provide context for why consumers are receiving the notice and help consumers identify errors. For example, the consumer could compare this table to the payment notices to see whether the prior attempts were initiated for the correct amount. The Bureau seeks comment on the inclusion of this information, including whether more or less information about the prior unsuccessful attempts should be included in the notice.

15(d)(3)(viii) CFPB information

Proposed § 1041.15(d)(3)(v) would require the consumer rights notice to include information about the Consumer Financial Protection Bureau. The notice would be required to provide a statement, using that phrase, that the CFPB created this notice, a statement that the CFPB is a Federal government agency, and the URL to the relevant portion of the CFPB Web site. This statement must be the last piece of information provided in the notice. The Bureau believes that providing information about the CFPB would help show that the notice is meant to inform consumers of their rights and that the lender is not independently choosing to stop initiating payment from the consumer's account. During the Bureau's consumer testing, some participants reviewing forms that places CFPB information adjacent to the loan information believed that the loan was guaranteed by or otherwise provided by the government. Providing this statement at the end of the notice would help prevent consumer confusion between the lender and the CFPB. The Bureau seeks comment about this CFPB content, including whether more or less information about the Bureau would be useful to consumers receiving this consumer rights notice.

15(e) Electronic Short Notice

15(e)(1) General

For lenders to deliver the consumer rights notice required under proposed § 1041.15(d) through an electronic delivery method, proposed § 1041.15(e) would require the lenders to provide an electronic short notice that contains a link to the full consumer rights notice. This notice would contain a truncated version of the content in proposed § 1041.15(d)(3), along with an email subject line, if applicable, and a unique Web site URL that links to the full consumer rights notice.

For many of the same reasons discussed above in connection with § 1041.15(c), the Bureau believes that the electronic short notice should contain limited content to maximize the utility of notices for consumers and minimize the burden on lenders. Consistent with the Bureau's authority under section 1032 of the Dodd-Frank Act, these proposed requirements would help ensure that consumer rights under proposed § 1041.14 are effectively disclosed to consumers. The Bureau seeks comment on the information in the electronic short notice, including whether information about the consumer's account would be helpful and whether less information should be included. The Bureau also seeks comment on whether lenders should be required to provide the full consumer rights notice, rather the two-step electronic short notice, when email is the method of electronic delivery.

15(e)(2) Content

Proposed § 1041.15(e)(2) would require that the electronic short notice contain an identifying statement, a statement that the last two attempts were returned, consumer account identification information, and a statement of the prohibition under Federal law, using language substantially similar to the language set forth in Model Form A-8 in appendix A to proposed part 1041. These terms are described for the full consumer rights notice in proposed § 1041.15(d)(3)(i), (ii), (iii), and (v). Proposed comment 15(e)(2)-1 clarifies that when a lender provides the electronic short notice by email, the email must contain this identifying statement in both the subject line and the body of the email. In order to provide consumers access to the full consumer rights notice, proposed § 1041.15(e)(2)(v) would also require the electronic short notice to contain the unique URL of a Web site that the consumer may use to access the consumer rights notice.

The Bureau understands that the unique Web site URL contains limited privacy risks because it would be unlikely that a third party will come across a unique URL. Even if a third party did discover this URL, the notice would not contain identifying information such as the consumer's name or full account number. The Bureau seeks comment on the burden on lenders of providing this notice through a Web site and on alternative methods of electronic delivery that may be less burdensome. The Bureau invites comment on the two-step disclosure process for electronic delivery, including whether more secure options for electronic delivery are available. The Bureau specifically seeks comment on whether it should allow lenders to provide the full notice through an email attachment or text message attachment to the short electronic notice, rather than using the linked URL process. The Bureau seeks comment on the content of this electronic short notice, including whether all of this information should be required.

Subpart E—Information Furnishing, Recordkeeping, Anti-Evasion, and Severability

Sections 1041.16 Information Furnishing Requirements and 1041.17 Registered Information Systems

Overview of Sections 1041.16 and 1041.17

As described in proposed §§ 1041.4 and 1041.8, the Bureau believes that it may be an unfair and abusive practice to make a covered loan without reasonably determining that the consumer has the ability to repay the loan. The Bureau proposes to prevent the abusive and unfair practice by, among other things, including in this proposal requirements for how a lender may reasonably determine that a consumer has the ability to repay a loan.

The Bureau believes that, in order to achieve these consumer protections, a lender must have access to reasonably comprehensive information about a consumer's current and recent borrowing history, including covered loans made to the consumer by other lenders, on a real-time or close to real-time basis. For the most part, however, lenders currently making loans that would be covered under the proposal do not furnish to consumer reporting agencies, either at all[851] or consistently,[852] information concerning loans that would be covered short-term loans or concerning a large portion of loans that would be covered longer-term loans, so that a lender's access to information about a consumer's borrowing history with other lenders is limited. As discussed above in part II, online borrowers appear especially likely to move from lender to lender, making it particularly important for online lenders to have access to information about loans made by other lenders in order to assess properly a consumer's eligibility for a loan under the proposal. Fourteen States require lenders to provide information about certain loans to statewide databases in order to address these information gaps and ensure that lenders have information necessary to comply with various State restrictions concerning lending, but only lenders licensed in those States furnish information to those databases.

To ensure that lenders making loans that would be covered under this proposal have access to timely and reasonably comprehensive information about a consumer's current and recent borrowing history with other lenders, proposed § 1041.16 would require lenders to furnish certain information about most covered loans[853] to each information system registered with the Bureau pursuant to proposed § 1041.17.[854] This requirement would be in addition to any furnishing requirements existing under other Federal or State law. These registered information systems would be consumer reporting agencies within the meaning of section 603(f) of the FCRA,[855] and lenders furnishing information to these systems as required under proposed § 1041.16 would be required to comply with the provisions of the FCRA and its implementing regulations applicable to furnishers of information to consumer reporting agencies.[856] The furnishing requirement under proposed § 1041.16 would enable a registered information system to generate a consumer report containing relevant information about a consumer's borrowing history, regardless of which lender had made a covered loan to the consumer previously. Under the proposal, a lender contemplating making most covered loans to a consumer would be required to obtain a consumer report from a registered information system and consider such a report in determining whether the loan could be made to the consumer, in furtherance of the consumer protections of proposed part 1041.[857]

The Bureau considered an alternative approach to ensure that lenders could obtain reasonably comprehensive information about consumers' borrowing history across lenders. Under this alternative approach, lenders would furnish information about covered loans to only one of the entities registered with the Bureau, but would be required to obtain a consumer report from each such entity.[858] The Bureau believes that this approach would likely be more costly for lenders than the proposed approach to require that lenders obtain a report from only one entity, however, as lenders potentially would need to obtain several consumer reports for every application for a covered short-term loan made under proposed § 1041.5, a covered short-term loan made under proposed § 1041.7, or a covered longer-term loan made under proposed § 1041.9. The Bureau recognizes that there are also costs involved in furnishing to multiple entities, but, as discussed below, anticipates that those costs could be reduced substantially with appropriate coordination concerning data standards. The Bureau believes on balance that the furnishing costs would be less expensive overall, and thus is proposing that approach. The Bureau solicits comment on whether the proposed approach reflects the most appropriate way to ensure that lenders can obtain consumers' borrowing history across lenders, or whether there are other approaches the Bureau should consider.

The Bureau also considered an alternative under which lenders would be required to furnish information to the Bureau or a contractor designated by the Bureau and to obtain a report from the Bureau or its contractor. Such an approach might be similar to the approaches of the 14 States previously referenced. However, the Bureau believes that these functions are likely better performed by the private sector and that the proposed approach would permit faster implementation of this rule. Further, there may be legal or practical obstacles to this alternative approach. The Bureau solicits comment on this alternative.

The Bureau solicits comment on whether the burdens associated with obtaining consumer reports from registered information systems and furnishing information about covered loans as would be required under proposed § 1041.16 are justified and whether there are alternative ways to ensure that lenders have access to information about a consumer's borrowing history necessary to achieve the consumer protection goals of proposed part 1041, including not establishing a program for registering information systems and instead relying on lenders' own records, the records of their affiliates, and existing consumer reporting markets.

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[851] During the SBREFA process, SERs provided feedback that, in general, they do not furnish information to consumer reporting agencies. Credit union SERs and some of the SERs extending longer-term loans stated that they furnish information to consumer reporting agencies, however.

[852] Based on its outreach, the Bureau understands that many lenders making loans the Bureau proposes to cover under this rule that do currently furnish information to consumer reporting agencies do not furnish information about all loans made by a consumer, but only furnish if the borrower is new or returning after an extended absence from the lender's records and then only furnish information concerning the first loan made to the consumer. The Bureau further understands that some lenders furnish only negative information concerning loans made whereas others furnish both negative and positive information.

[853] As discussed further below, the proposal would also permit loans made under proposed §§ 1041.11 and 1041.12 to be furnished pursuant to proposed § 1041.16.

[854] As discussed further below, proposed § 1041.17 provides for both provisional registration and registration. Under the proposal, entities seeking to become registered information systems after the effective date of proposed § 1041.16 would first need to be provisionally registered for a period of time.

[855] 15 U.S.C. 1681a(f).

[856] These provisions include a number of requirements relating to the accuracy of information furnished, including the requirement to investigate consumer disputes and to correct and update information. *See, e.g.,* 15 U.S.C. 1681s-2(a) through (b); 12 CFR 1022.42 through 1022.43. Compliance with the FCRA may require that information in addition to that specified in the proposal is furnished to information systems registered with the Bureau. The furnishing requirements that would be imposed under the proposal aim to ensure that lenders making most loans covered under the proposal would have access to information necessary to enable compliance with the provisions of this proposal. These proposed requirements would not supersede any requirements imposed upon furnishers by the FCRA.

[857] Lenders using consumer reports as required under this proposal would be required to comply with the provisions of the FCRA and its implementing regulations applicable to users, including, for example, the requirement to provide a consumer a notice when taking adverse action with respect to the consumer that is based in whole or in part on information contained in a consumer report. *See, e.g.,* 15 U.S.C. 1681m(a).

[858] If lenders were required to furnish information to only one consumer reporting agency, the Bureau believes there would be a substantial risk that, for many consumers, no consumer reporting agency would be able to provide a reasonably comprehensive report of the consumer's current and recent borrowing history with respect to covered loans across lenders.

The proposal would require that the Bureau identify the particular consumer reporting agencies to which lenders must furnish information pursuant to proposed § 1041.16 and from which lenders may obtain consumer reports to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. As described in more detail below, proposed § 1041.17 would provide that the Bureau identify these consumer reporting agencies by registering them with the Bureau as information systems. Lenders that obtain a consumer report from any registered information system thus would be assured of obtaining a reasonably comprehensive account of a consumer's relevant borrowing history across lenders. Requiring registration with the Bureau would provide certainty to lenders concerning both the information systems to which they would be required to furnish information under proposed § 1041.16 and the information systems from which they would be required to obtain a consumer report to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10.

Proposed § 1041.17 sets forth proposed processes for registering information systems before and after the furnishing obligations under proposed § 1041.16 take effect and proposed conditions that an entity would be required to satisfy in order to become a registered information system. These proposed conditions, described in detail below, aim to ensure that registered information systems would enable lender compliance with proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 so as to achieve the consumer protections of proposed part 1041, and to confirm that the systems themselves maintain compliance programs reasonably designed to ensure compliance with applicable laws, including those laws designed to protect sensitive consumer information. Based on its outreach, the Bureau believes that there are several consumer reporting agencies currently serving the lending markets covered by this proposed rule that are interested in becoming registered information systems and would be eligible to do so.

Legal Authority for Sections 1041.16 and 1041.17

The Bureau is proposing §§ 1041.16 and 1041.17 pursuant to section 1031(b) of the Dodd-Frank Act, which provides that the Bureau's rules may include requirements for the purpose of preventing unfair or abusive acts or practices. As discussed above, the Bureau believes that it may be an unfair and abusive practice to make a covered loan without determining that the consumer has the ability to repay the loan. Accordingly, proposed §§ 1041.5 and 1041.9 would require lenders to make a reasonable determination that a consumer has the ability to repay the loan. Proposed §§ 1041.6 and 1041.10 would augment the basic ability-to-repay determinations required by proposed §§ 1041.5 and 1041.9 in circumstances in which the consumer's recent borrowing history or current difficulty repaying an outstanding loan provides important evidence with respect to the consumer's financial capacity to afford a new covered loan. In these circumstances, proposed §§ 1041.6 and 1041.10 would require the lender to factor this evidence into the ability-to-repay determination. Proposed § 1041.7 would provide a limited conditional exemption from the requirement to assess consumers' ability to repay covered short-term loans, based on compliance with certain requirements and conditions that also factor in borrowing history in a number of respects.

The provisions of proposed §§ 1041.16 and 1041.17 are designed to ensure that lenders have access to information to achieve the consumer protections of proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. The Bureau believes that to prevent the apparent abusive or unfair practices identified in this proposed rule, it is necessary or appropriate to require lenders to obtain and consider relevant information about a borrower's current and recent borrowing history, including covered loans made by all lenders. The Bureau believes that requiring lenders to furnish relevant information concerning most covered loans pursuant to proposed § 1041.16 would ensure that lenders have access to a reliable and reasonably comprehensive record of a consumer's borrowing history when considering extending the consumer a loan, which would in turn ensure that consumers receive the benefit of the protections imposed by proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. The Bureau thus proposes §§ 1041.16 and 1041.17 to prevent the apparent unfair or abusive practices identified and the consumer injury that results from them.

Proposed §§ 1041.16 and 1041.17 are also authorized by section 1024 of the Dodd-Frank Act. Section 1024 includes the authority in section 1024(b)(7) to: (A) "prescribe rules to facilitate supervision of persons described in subsection (a)(1) and assessment and detection of risks to consumers"; (B) "require a person described in subsection (a)(1), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers"; and (C) "prescribe rules regarding a person described in subsection (a)(1), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers."[859] The provisions in proposed § 1041.17—including the criteria governing when the Bureau may register or provisionally register information systems, suspend or revoke such registration, or deny applications for registration—are designed to facilitate supervision and the assessment and detection of risks to consumers, and to ensure that information systems that choose to register are legitimate entities and able to perform their obligations to consumers. These criteria would also ensure that registered information systems provide information to the Bureau about their activities and compliance systems or procedures. In developing proposed §§ 1041.16 and 1041.17, the Bureau consulted with agencies from States that require lenders to provide information about certain loans to statewide databases and intends to continue to do so where appropriate.[860]

The Bureau also believes proposed §§ 1041.16 and 1041.17 may be "necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof," pursuant to section 1022(b)(1) of the Dodd-Frank Act.[861] In addition to being appropriate to carry out the purposes and objectives of this proposed rule, proposed §§ 1041.16 and 1041.17 would help ensure that "consumers are protected from unfair, deceptive, or abusive acts and practices," and "markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation."[862]

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[859] 12 U.S.C. 5514(b)(7)(A) through (C).

[860] *See* 12 U.S.C. 5514(b)(7)(D).

[861] 12 U.S.C. 5512(b)(1).

Proposed § 1041.17 would permit the Bureau to provisionally register or to register an information system only if the Bureau determines, among other things, that the information system acknowledges that it is, or consents to being, subject to the Bureau's supervisory authority.[863] Under section 1024 of the Dodd-Frank Act, the Bureau has supervisory and enforcement authority over, among other non-bank persons, "larger participant[s] of a market for other consumer financial products or services," as the Bureau defines by rule.[864] The Bureau has promulgated a final rule defining larger participants of the market for consumer reporting.[865] The Bureau believes that entities that choose to become provisionally registered and registered information systems under proposed § 1041.17 would be non-depository institutions and would qualify as larger participants in the market for consumer reporting, and their acknowledgment would reflect that status. However, other entities may consent to the Bureau's supervisory authority as well.[866]

The provisions in proposed §§ 1041.16 and 1041.17 also would be authorized by section 1022(c)(7) of the Dodd-Frank Act, which provides that the Bureau "may prescribe rules regarding registration requirements applicable to a covered person, other than an insured depository institution, insured credit union, or related person." Proposed § 1041.17 would provide rules governing the registration of information systems with the Bureau.

Effective Date of Proposed §§ 1041.16 and 1041.17

Building a reasonably comprehensive record of recent and current borrowing would take some time and raise a number of transition issues. For entities that want to become registered information systems before the requirements to obtain a consumer report from a registered information system under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 take effect, the Bureau is proposing a process that would generally work in the following sequence: proposed § 1041.17 would take effect 60 days after publication of the final rule in the **Federal Register**, so that the standards and process for registration would be operative. Interested entities would submit to the Bureau an application for preliminary approval for registration, and then a full application for registration after receiving preliminary approval and obtaining certain written assessments from third parties concerning their compliance programs. After an entity becomes a registered information system, the proposal would provide at least 120 days for lenders to onboard to the information system and prepare for furnishing before furnishing is required under proposed § 1041.16 or permitted under proposed §§ 1041.11 and 1041.12. As described in more detail in the section-by-section analysis of proposed § 1041.17, the Bureau is proposing a timeline for these steps that it believes would ensure that information systems would be registered and lenders ready to furnish at the time the furnishing obligation in proposed § 1041.16 takes effect.

As described above, the Bureau is proposing to allow approximately 15 months after publication of the final rule in the **Federal Register** for information systems to complete the registration process described above and for lenders to onboard to registered information systems and prepare to furnish. However, the Bureau has considered whether an additional period would be needed between the date that furnishing to registered information systems would begin and the date that the requirements to obtain a consumer report from a registered information system under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 would apply.

The Bureau has considered two general approaches to addressing this question. Under one approach, § 1041.16 would become effective on the same date as proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. The result of these simultaneous effective dates would be that, for a period immediately after these sections of the rule go into effect, the information in a consumer report obtained from a registered system would not be as comprehensive as it would be after longer periods of required furnishing. For example, if lenders are required to furnish information to a registered information system pursuant to proposed § 1041.16 beginning on January 1, a consumer report obtained by a lender from the registered information system on January 15 would contain 15 days' worth of the consumer's borrowing history. To the extent a new loan was originated to the consumer during that period, the report would be useful for purposes of the proposed rule and would achieve its consumer protections, but the passage of time would increase the degree of utility these reports provide to the consumer protection goals of proposed part 1041.

Another general approach would be to stagger the effective dates of the furnishing obligation and the obligation to obtain a consumer report from a registered information system. One option under this approach would be to have the furnishing requirement in proposed § 1041.16 go into effect 30 days (or some other longer time period) before the effective dates of proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. Another option would be to have proposed § 1041.16 go into effect at the same time as proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10, but to delay the requirements that lenders obtain a consumer report from a registered information system before originating a covered loan under those proposed sections. Staggering effective dates in one of these ways may increase to some degree the utility of the consumer reports that lenders would be required to obtain at the point that the requirements become effective, but may add complexity to implementation of the rule and would involve other tradeoffs. For example, having the furnishing requirement in proposed § 1041.16 go into effect before the effective dates of proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 might provide lenders a period of time to focus solely on the rule's furnishing requirements, but it would mean that the information furnished during that period would be limited in some respects.[867] And delaying the requirement to obtain a consumer report from a registered information system until furnishing had been underway for a period of time would mean that lenders would be able to make covered loans under proposed §§ 1041.5, 1041.6, 1041.9, and 1041.10 without access to the consumer borrowing history information.

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[862] 12 U.S.C. 5511(b)(2) and (b)(5). Proposed § 1041.16(b)(2), which provides that the Bureau will publish in the **Federal Register** and maintain on the Bureau's Web site a current list of registered and provisionally registered information systems, is authorized by section 1021(c)(3) of the Dodd-Frank Act, which provides that it is a function of the Bureau to "publish[] information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets." 12 U.S.C. 5511(c)(3).

[863] *See also* 12 U.S.C. 5514(b)(1)(A) through (C) (authorizing, with respect to persons described in section 1024, the Bureau to "require reports and conduct examinations . . . for purposes of—(A) assessing compliance with the requirements of Federal consumer financial law; (B) obtaining information about the activities and compliance systems or procedures of such person; and (C) detecting and assessing risks to consumers and to markets for consumer financial products and services").

[864] 12 U.S.C. 5514(a)(1)(B) and (a)(2).

[865] 12 CFR part 1090; Defining Larger Participants of the Consumer Reporting Market, 77 FR 42873 (July 20, 2012).

[866] For example, 12 CFR 1091.110(a) provides that, "[n]otwithstanding any other provision, pursuant to a consent agreement agreed to by the Bureau, a person may voluntarily consent to the Bureau's supervisory authority under 12 U.S.C. 5514, and such voluntary consent agreement shall not be subject to any right of judicial review."

[867] For example, proposed § 1041.16(c)(1)(iv) would require that lenders furnish information concerning whether the loan is made under

The Bureau believes the question of how to ensure early lender access to borrowing history is particularly critical for purposes of proposed § 1041.7, which would permit lenders to make certain covered short-term loans without conducting a full ability to repay analysis. Because a detailed financial analysis is not required under proposed § 1041.7 and because the operation of certain other protective features of proposed § 1041.7 hinge on borrowing history, the Bureau is proposing to provide that such loans can only be made after obtaining and considering a consumer report from a registered information system.[868] In contrast, lenders would be permitted to make loans pursuant to proposed § 1041.5 or § 1041.9 without obtaining a consumer report from a registered information system, if such a report is not available. Lenders also would not be required to obtain a consumer report from a registered information system before making loans under proposed §§ 1041.11 or 1041.12.

The Bureau solicits comment on these effective date options and on alternative ways to populate each registered information systems' database to hasten the utility of consumer reports provided by a registered information system, in furtherance of the consumer protections of proposed part 1041. For example, although the proposal would require that lenders furnish information only about loans consummated on or after the furnishing obligation takes effect, the Bureau has considered whether it should also require lenders to furnish information concerning loans that are outstanding loans at the time the furnishing obligation takes effect and that satisfy the definition of a covered loan under the rule. The Bureau is not proposing such a requirement, however, due to concerns that, at least with respect to furnishing to information systems registered as of the effective date of proposed § 1041.16, such a requirement would be burdensome to lenders and may result in poor data quality.

Although it does not impact the effective dates of the various sections, the Bureau notes that similar transition issues are raised with regard to the population of the database of any entity that becomes a registered information system after the effective date of proposed § 1041.16. As detailed below, the Bureau is proposing a process for those entities that would require that, prior to becoming a registered information system, such entities must first become "provisionally registered" information systems. Under the proposal, lenders would be required to furnish information to provisionally registered information systems, but would not be permitted to rely on consumer reports generated by such a system to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 until the system becomes fully registered. The Bureau contemplates that this furnishing-only stage would last for 60 days, following a 120-day period to allow onboarding. The Bureau believes that this would ensure that at the point at which an information system becomes registered after the effective date of the proposed § 1041.16, it would be able to supply reports to lenders with reasonably comprehensive information about consumers' recent borrowing histories.

The Bureau expects that information systems will be registered prior to the effective date of proposed § 1041.16, and, assuming this is the case, believes that it would be preferable for lenders to obtain reports from these established systems until new information systems registered after the effective date have built a reasonably comprehensive database of furnished information concerning covered loans. For this reason, although the Bureau is considering no delay between the lender's obligation to furnish information to and obtain a report from an information registered before the effective date of proposed § 1016.16, as described above, it is proposing a 60-day delay between the lender's obligation to furnish information to and obtain a report from an information system registered after the effective date of proposed § 1016.16.

The Bureau notes that proposed § 1041.16 is referenced in several places in the regulation text of proposed § 1041.17. If proposed § 1041.17 takes effect prior to proposed § 1041.16, as the Bureau expects, these references will be replaced in the final rule with the appropriate dates and content from proposed § 1041.16. For purposes of this notice of proposed rulemaking, the Bureau includes the cross-references to § 1041.16 in proposed § 1041.17 to clarify how these proposed sections would interact.

16(a) Loans Subject to Furnishing Requirement

Proposed § 1041.16(a) would require that, for each covered loan a lender makes other than a covered longer-term that is made under proposed § 1041.11 or § 1041.12, the lender furnish the information concerning the loan described in § 1041.16(c) to each information system described in § 1041.16(b). Proposed comment 1041.16(a)-1 clarifies that, with respect to loans made under proposed §§ 1041.11 and 1041.12, a lender may furnish information concerning the loan described in proposed § 1041.16(c) to each information system described in proposed § 1041.16(b) in order to satisfy proposed § 1041.11(e)(2) or § 1041.12(f)(2), as applicable. As described above, the purpose of the proposed furnishing requirement is to enable a registered information system to generate a consumer report containing relevant information about a consumer's borrowing history, regardless of which lender has made a covered loan to the consumer previously. The Bureau believes that requiring lenders to furnish information about most covered loans would achieve this result and, accordingly, the consumer protections of proposed part 1041.

Nonetheless, the Bureau acknowledges the burden that would be imposed by this proposed requirement to furnish information to each registered and provisionally registered information system. During the SBREFA process, the SERs expressed concern about the costs associated with furnishing information to commercially available consumer reporting agencies, and the Small Business Review Panel Report recommended that the Bureau consider streamlining the requirements related to furnishing information about the use of covered loans, including ways to standardize data to be furnished pursuant to the proposal.

The Bureau believes that the development of common data standards across information systems would benefit lenders and information systems and the Bureau intends to foster the development of such common data standards where possible to minimize burdens on furnishers. The Bureau believes that development of these standards by market participants would likely be more efficient and offer greater flexibility and room for innovation than if the Bureau prescribed particular standards in this rule, but it solicits comment on whether it should require that information is furnished using particular formats or data standards or in a manner consistent with a particular existing data standard. The Bureau also seeks comment on whether it should consider restrictions related to fees or charges information systems might impose in connection with the proposed furnishing requirement, and whether any such restrictions should apply to all fees or charges or only to certain types of fees or charges.

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§ 1041.5, § 1041.7, or § 1041.9, as applicable, which information would not be available if those sections were not yet in effect at the time of the furnishing.

[868] *See* proposed comment 7(a)-2.

The Bureau believes that the burdens associated with the proposed furnishing obligation would be justified by the need to ensure that lenders making loans pursuant to proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 have access to information sufficient to enable compliance with those provisions, in furtherance of the consumer protections of proposed part 1041. The Bureau solicits comment on whether the burdens of furnishing information about covered loans as would be required under proposed § 1041.16 are justified and whether there are alternative ways to ensure that lenders have access to information about a consumer's borrowing history necessary to achieve the consumer protection goals of proposed part 1041.

As discussed in the section-by-section analyses of proposed §§ 1041.11 and 1041.12, a lender making a covered longer-term loan under the alternative requirements in one of these sections would not be required to furnish information pursuant to proposed § 1041.16 if the lender instead furnishes information about the loan to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The Bureau believes that this furnishing requirement strikes the appropriate balance between minimizing burden on lenders that would make loans pursuant to these proposed sections and facilitating access to a reasonably comprehensive record of consumers' borrowing histories with respect to these loans.

16(b) Information Systems To Which Information Must Be Furnished

16(b)(1)

Proposed § 1041.16(b)(1) would require that a lender furnish the information required in proposed § 1041.16(a) and (c) to each information system registered pursuant to § 1041.17(c)(2) and (d)(2) and provisionally registered pursuant to § 1041.17(d)(1).[869] The proposal would delay the furnishing obligation with regard to newly registered and provisionally registered systems by requiring that lenders furnish information about a loan to such systems only if the system has been registered for 120 days or more as of the date the loan is consummated. This 120-day delay is designed to allow both lenders and the information systems time to prepare for furnishing to begin.

The Bureau recognizes that lenders, especially those that do not currently furnish loan information to a consumer reporting agency, would need to engage in a variety of activities in order to prepare for compliance with proposed § 1041.16, including onboarding to a provisionally registered or registered information system's platform, developing and implementing policies and procedures to ensure accurate and timely furnishing of information, and training relevant employees. However, the Bureau believes that the time required for these activities would decrease after lenders have begun furnishing to the first registered information system because the Bureau expects the core components of furnishing pursuant to proposed § 1041.16 to be the same across information systems. The Bureau believes that 120 days would allow lenders sufficient time to prepare for compliance with proposed § 1041.16 and would allow an information system sufficient time to onboard all lenders that would be required to furnish to the information system. The Bureau solicits comment on whether 120 days provides sufficient time for these activities or whether additional time would be needed. Assuming that information systems are registered before the effective date of the furnishing obligation, as the Bureau expects will be the case, the Bureau further solicits comment on whether less time would be required for these activities with respect to information systems provisionally registered after the effective date of the furnishing obligation.

As proposed, § 1041.16(b)(1) would require lenders to furnish information about a covered loan only to information systems that are provisionally registered or registered at the time the loan is consummated. For example, if an information system were registered pursuant to proposed § 1041.17(c)(2) 120 days before the effective date of proposed § 1041.16, a lender would be required to furnish the information required under proposed § 1041.16 to that information system beginning on the effective date of proposed § 1041.16 for covered loans consummated on or after that date. Proposed comment 16(b)-1 provides an example to illustrate when information concerning a loan must be furnished to a particular information system. Proposed comment 16(b)-2 clarifies that lenders are not required to furnish information to entities that have received preliminary approval for registration pursuant to proposed § 1041.16(c)(1) but are not registered pursuant to proposed § 1041.16(c)(2).

As discussed above, the Bureau has also considered whether to propose a requirement that lenders report outstanding loans in addition to new originations at the point that furnishing begins. While the Bureau is concerned that such a requirement could impose significant burden during the initial implementation period for the rule because lenders would have to compile and report data on loans that may never have been previously reported, the impacts may be less once lenders are already reporting originations to some registered information systems on an ongoing basis. Accordingly, in addition to the general request for comment above, the Bureau solicits comment specifically on whether lenders should be required to furnish information on outstanding covered loans when they first onboard to the platforms of provisionally registered information systems, after the effective date of the furnishing requirement in proposed § 1041.16. Such an approach would improve the comprehensiveness of the consumer reports that these systems would generate once they were registered pursuant to proposed § 1041.17(d)(2), since it would allow them to include data going back not just for the preceding 60 days as under the proposed rule, but for several months prior. This would particularly improve the resulting reports with respect to information about covered longer-term loans. The Bureau believes that requiring the reporting of outstanding loans to provisionally registered information systems may impose additional burden on lenders compared to the proposal,[870] however, and solicits comment on whether such a requirement would be appropriate.

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[869] As described above, under the proposal lenders would be required to furnish information to provisionally registered information systems, but would not be permitted to rely on consumer reports generated by such a system to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 until the system becomes fully registered.

[870] Such additional burden may be incremental. The Bureau expects that, at the time a new information system is provisionally registered, lenders will have already furnished many or most of their then outstanding covered loans to a previously registered information system. Especially assuming that registered and provisionally registered information systems develop common data standards, the development of which the Bureau intends to foster where possible, the burden of furnishing information

16(b)(2)

Proposed § 1041.16(b)(2) would require that the Bureau publish on its Web site and in the **Federal Register** notice of the provisional registration of an information system pursuant to proposed § 1041.17(d)(1), registration of an information system pursuant to proposed § 1041.17(c)(2) or (d)(2), and suspension or revocation of the provisional registration or registration of an information system pursuant to proposed § 1041.17(g). Proposed § 1041.16(b)(2) would provide that, for purposes of proposed § 1041.16(b)(1), an information system is provisionally registered or registered, and its provisional registration or registration suspended or revoked, on the date that the Bureau publishes notice of such provisional registration, registration, suspension, or revocation on its Web site. Proposed § 1041.16(b)(2) further provides that the Bureau would maintain on the Bureau's Web site a current list of information systems provisionally registered pursuant to § 1041.17(d)(1) and registered pursuant to § 1041.17(c)(2) and (d)(2).

The date that an information system is provisionally registered pursuant to proposed § 1041.17(d)(1) or registered pursuant to proposed § 1041.17(c)(2) would be the date that triggers the 120-day period at the end of which lenders would be obligated to furnish information to the information system pursuant to proposed § 1041.16. An information system's automatic change from being provisionally registered pursuant to proposed § 1041.17(d)(1) to being registered pursuant to proposed § 1041.17(d)(2) would not trigger an additional obligation on the part of a lender; rather, as explained further below, the significance of the registration of a provisionally registered system would be that lenders may rely on a consumer report from the system to comply with their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10.[871] Under the proposal, as a result of the suspension or revocation of an entity's provisional registration or registration pursuant to proposed § 1041.16(g), lenders would no longer be required to furnish information to the information system pursuant to proposed § 1041.16 or, with respect to registered information systems, permitted to rely on a consumer report generated by the consumer reporting agency to comply with their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10.

The Bureau believes that publication of a notice on its Web site may be the most effective way to ensure that lenders receive notice of an information system's provisional registration or registration, or the suspension or revocation of its provisional registration or registration. Accordingly, for purposes of proposed § 1041.16(b)(1),[872] the Bureau proposes to tie the dates of provisional registration, registration, and suspension or revocation of provisional registration or registration, as applicable, to publication of a notice on its Web site. The Bureau also proposes to publish notice of any provisional registration, registration, or suspension or revocation of provisional registration or registration in the **Federal Register**. If proposed § 1041.16 is adopted, the Bureau expects that it would establish a means by which lenders could sign up to receive email notifications if and when a new information system is provisionally registered or registered or an information system has had its provisional registration or registration suspended or revoked. The Bureau also expects that it would conduct outreach with trade associations and otherwise take steps to ensure that lenders covered by the rule are aware when an information system is provisionally registered or registered, or when provisional registration or registration is suspended or revoked.

Proposed § 1041.16(b)(2) also provides that the Bureau would maintain on its Web site a current list of information systems provisionally registered pursuant to § 1041.17(d)(1) and registered pursuant to § 1041.17(c)(2) and (d)(2). The Bureau intends that its Web site would clearly identify all provisionally registered and registered information systems, the dates that they were provisionally registered or registered with the Bureau, and the dates by which lenders must furnish information to each pursuant to § 1041.16(b). The Bureau solicits comment on additional ways it might inform lenders when information systems are first provisionally registered or registered, or when provisional registration or registration is suspended or revoked, should proposed §§ 1041.16 and 1041.17 be adopted.

16(c) Information To Be Furnished

Proposed § 1041.16(c) identifies the information a lender must furnish concerning each covered loan as required by proposed § 1041.16(a) and (b). As discussed below, proposed § 1041.16(c) would require lenders to furnish information when the loan is consummated and again when it ceases to be an outstanding loan. If there is any update to information previously furnished pursuant to proposed § 1041.16 while the loan is outstanding, proposed § 1041.16(c)(2) would require lenders to furnish the update within a reasonable period of the event that causes the information previously furnished to be out of date. However, the proposal would not require a lender to furnish an update to reflect that a payment was made; a lender would only be required to furnish an update if such payment caused information previously furnished to be out of date. Under proposed § 1041.16(c)(1) and (3), lenders must furnish information no later than the date of consummation, or the date the loan ceases to be outstanding, as applicable, or as close in time as feasible to the applicable date. Proposed comment 16(c)-1 clarifies that, under proposed § 1041.16(c)(1) and (3), if it is feasible to report on the applicable date, the applicable date is the date by which the information must be furnished.

Proposed § 1041.16(c) would require that a lender furnish the required information in a format acceptable to each information system to which it must furnish information. Proposed § 1041.17(b)(1) would require that, to be eligible for provisional registration or registration, an information system must use reasonable data standards that facilitate the timely and accurate transmission and processing of information in a manner that does not impose unreasonable cost or burden on lenders.[873] As discussed above and below, the Bureau solicits comment on whether it should require that information is furnished using particular formats or data standards or in a manner consistent with a particular existing data standard.

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previously furnished to another information system may not be significant.

[871] Under the proposal, lenders would be required to furnish to such a system beginning 120 days from the date of the system's provisional registration and to continue to do so after the system becomes registered.

[872] For the reasons discussed in the section-by-section analysis of proposed § 1041.17(g), for purposes of proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10, which would require a lender to obtain a consumer report from a registered information system, the Bureau is proposing that a suspension or revocation of registration be effective five days after the Bureau publishes notice of the suspension or revocation on its Web site.

[873] Among other things, these standards must facilitate lender and information system compliance with the provisions of the FCRA and its implementing regulations concerning the accuracy of information furnished.

As noted above, compliance with the FCRA may require that information in addition to that specified under the proposal is furnished to information systems. The furnishing requirements that would be imposed under this proposal aim to ensure that lenders making most loans covered under the proposal would have access to information necessary to enable compliance with the provisions of this proposal. These proposed requirements would not supersede any requirements imposed upon furnishers by the FCRA.

16(c)(1) Information To Be Furnished at Loan Consummation

Proposed § 1041.16(c)(1) specifies the information a lender would be required to furnish at loan consummation. The Bureau proposes that lenders furnish this information for the reasons specified below and to ensure that lenders using consumer reports generated by registered information systems would have access to information sufficient to enable them to meet their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. In addition to soliciting comment on the specific information that would be required under proposed § 1041.16(c)(1)(i) through (viii), the Bureau generally solicits comment on whether proposed § 1041.16(c)(1) is reasonable and appropriate, including whether the information lenders would be required to furnish at loan consummation under the proposal is sufficient to ensure that lenders using consumer reports obtained from a registered information system would have sufficient information to comply with their obligations under the proposal and achieve the consumer protections of proposed part 1041. The Bureau also solicits comment on whether lender access to any additional information concerning a consumer's borrowing history would further the consumer protections of proposed part 1041 and, if so, the specific potential burdens and costs of requiring such information to be furnished.

As proposed, § 1041.16(c)(1) would require that a lender furnish the specified information no later than the date on which the loan is consummated or as close in time as feasible after that date. Although the Bureau recognizes that some installment lenders may furnish loan information in batches on a periodic basis to consumer reporting agencies, the Bureau believes that at least some lenders that would be covered under this proposed rule have experience in furnishing loan information in real time or close to real time and on a loan-by-loan basis, rather than a batch basis. For example, based on its outreach, the Bureau understands that at least some lenders making loans that would be covered under this proposal already furnish information concerning those loans to specialty consumer reporting agencies on an individual loan basis and in real time or close in time to the particular event furnished, such as when final payment on a loan is made.[874]

The Bureau believes that a real-time or close to real-time furnishing requirement may be appropriate to achieve the consumer protections of proposed part 1041. Such a requirement would ensure that lenders using consumer reports from a registered information system have timely information about most covered loans made by other lenders to a consumer. This is especially important with respect to covered short-term loans. One of the core purposes of proposed §§ 1041.5 through 1041.7, as discussed above, is to protect consumers from the harms associated with repeated reborrowing. The Bureau believes that, to achieve that end, lenders contemplating making covered loans under these provisions need timely information with respect to the consumer's recent borrowing history. Batch reporting on a lagged basis would not yield such information, and would thus be inconsistent with the objective of those provisions. For example, if lenders were to report on a monthly basis even one day after the end of the month, a lender contemplating making a covered loan to a consumer that obtains a report from a registered information system at the end of a month might not learn of two prior short-term loans made to the consumer during the course of the month.

The Bureau recognizes that real-time furnishing offers the best chance that a consumer report generated by a registered information system would capture all prior and outstanding covered loans made to the consumer but believes that the burdens of requiring real-time furnishing may be outweighed by what may be an incremental benefit. Accordingly, although the Bureau would encourage lenders to furnish information concerning covered loans on a real-time basis, the proposal would permit lenders to furnish the required information on a daily basis or as close in time to consummation as feasible. The Bureau solicits comment on whether the time period within which information would be required to be furnished under proposed § 1041.16(c)(1) is reasonable or whether an alternative period is more appropriate. The Bureau further solicits comment on specific circumstances under which furnishing information no later than the date a loan is consummated may not be feasible.

16(c)(1)(i)

Proposed § 1041.16(c)(1)(i) would require lenders to furnish information necessary to allow the lender and each provisionally registered and registered information system to uniquely identify the covered loan. This information would be necessary to ensure that updated information concerning the loan furnished pursuant to proposed § 1041.16(c)(2) and (3) would be attributed to the correct loan by the lender furnishing the information and by the provisionally registered or registered information system. The Bureau anticipates that information furnished to satisfy proposed § 1041.16(c)(1)(i) would likely be the loan number assigned to the loan by the lender, but proposed § 1041.16(c)(1)(i) would defer to lenders and information systems to determine what information is necessary or appropriate for this purpose. The Bureau solicits comment on this proposal, including whether it should specify the type of information lenders must furnish to ensure that updates to a covered loan are properly attributed.

16(c)(1)(ii)

Proposed § 1041.16(c)(1)(ii) would require lenders to furnish information necessary to allow the provisionally registered or registered information system to identify the specific consumer(s) responsible for the loan. This information would be necessary to enable a registered information system to provide to a lender a consumer report that accurately reflects a particular consumer's covered loan history across all lenders, which would enable lenders to comply with proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. This information would also be necessary to allow registered information systems to comply with their obligations under the FCRA.[875]

Proposed § 1041.16(c)(1)(ii) would defer to each information system concerning the specific items of identifying information necessary to identify the specific consumer(s) responsible for the loan. The Bureau seeks comment on whether it should require the furnishing of particular items of information in proposed § 1041.16(c)(1)(ii) to accomplish the goals of this paragraph.

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[874] Based on its consultation with the relevant State agencies, the Bureau understands that most of the State databases to which lenders must furnish information pursuant to State law, as described above, require data furnishing in real time or close to real time.

[875] *See, e.g.,* 15 U.S.C. 1681e(b), which requires that, "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

16(c)(1)(iii)

Proposed § 1041.16(c)(1)(iii) would require lenders to furnish information concerning whether the loan is a covered short-term loan, a covered longer-term loan, or a covered longer-term balloon-payment loan, as those terms are defined in proposed § 1041.2. Proposed comment 16(c)(1)-1 clarifies that compliance with proposed § 1041.16(c)(1)(iii) would require a lender to identify the covered loan as one of these types of loans and provides an example. This information would enable a registered information system to generate a consumer report that allows a lender to distinguish between types of loans, which would enable lender compliance with, for example, proposed § 1041.6(c).

16(c)(1)(iv)

Proposed § 1041.16(c)(1)(iv) would require lenders to furnish information concerning whether the loan is made under proposed § 1041.5, § 1041.7, or § 1041.9, as applicable. Proposed comment 16(c)(1)-2 clarifies that compliance with proposed § 1041.16(c)(1)(iv) would require a lender to identify the covered loan as made under one of these sections and provides an example. This information would enable a registered information system to generate a consumer report that allows a lender to distinguish between loans made pursuant to these provisions, which would enable the lender to comply with, for example, proposed § 1041.7(c). Proposed comment 16(c)(1)-2 also clarifies that a lender furnishing information concerning a covered loan that is made under § 1041.11 or § 1041.12 would not be required to furnish information that identifies the covered loan as made under one of these sections. Under the proposal, lenders would not need to distinguish between loans made pursuant to these provisions when contemplating making a new covered loan.

16(c)(1)(v)

Proposed § 1041.16(c)(1)(v) would require lenders to furnish, for a covered short-term loan, the loan consummation date. This information would enable a registered information system to generate a consumer report that would allow a lender to determine whether a contemplated loan is part of a loan sequence and the chronology of prior loans within a sequence, which would enable the lender to comply with several provisions under proposed §§ 1041.6 and 1041.7. A loan sequence is defined in proposed § 1041.2(a)(12), in part, as a series of consecutive or concurrent covered short-term loans in which each of the loans (other than the first loan) is made while the consumer currently has an outstanding covered short-term loan or within 30 days of the consumer having a previous outstanding covered short-term loan. A lender contemplating a new covered loan would require information concerning the consummation date of outstanding or prior loans to determine whether an outstanding loan or prior loan is or was part of a loan sequence and, if so, the chronology of the outstanding loan or prior loan within the sequence (for example, whether the outstanding prior loan was the second or third loan in the sequence).

16(c)(1)(vi)

Proposed § 1041.16(c)(1)(vi) would require lenders to furnish, for a loan made under proposed § 1041.7, the principal amount borrowed. This information would enable a registered information system to generate a consumer report that allows a lender to determine whether a contemplated loan would satisfy the principal amount limitations set forth in proposed § 1041.7(b)(1), which would enable the lender to comply with that section.

16(c)(1)(vii)

Proposed § 1041.16(c)(1)(vii) would require lenders to furnish, for a loan that is closed-end credit, the fact that the loan is closed-end credit, the date that each payment on the loan is due, and the amount due on each payment date. This information would allow a registered information system to generate a consumer report that enables a lender to make a reasonable projection of the amount and timing of payments due under a consumer's debt obligations, in compliance with, for example, proposed §§ 1041.5(c) and 1041.9(c).

As proposed, information furnished pursuant to § 1041.16(c)(1)(vii) would reflect the amount and timing of payments due under the terms of the loan as of the loan's consummation. As discussed below, proposed § 1041.16(c)(2) would require lenders to furnish any update to information previously furnished under proposed § 1041.16(c) within a reasonable period of the event that causes the information previously furnished to be out of date. Proposed comment 16(c)(2)-1 explains that, for example, if a consumer makes payment on a closed-end loan as agreed and the loan is not modified to change the dates or amounts of future payments on the loan, proposed § 1041.16(c)(2) would not require the lender to furnish an update to information furnished pursuant to proposed to proposed § 1041.16(c)(1)(vii). If, however, the lender extends the term of the loan, proposed § 1041.16(c)(2) would require the lender to furnish an update to the date that each payment on the loan is due and the amount due on each payment date to reflect the updated payment dates and amounts.

16(c)(1)(viii)

Proposed § 1041.16(c)(1)(viii) would require lenders to furnish, for a loan that is open-end credit, the fact that the loan is open-end credit, the credit limit on the loan, the date that each payment on the loan is due, and the minimum amount due on each payment date. As with information about loans that are closed-end credit required to be furnished pursuant to proposed § 1041.16(c)(1)(vii), information about loans that are open-end credit required to be furnished under proposed § 1041.16(c)(1)(viii) would allow a registered information system to generate a consumer report that enables a lender to make a reasonable projection of the amount and timing of payments due under a consumer's debt obligations, in compliance with, for example, proposed §§ 1041.5(c) and 1041.9(c).

Unlike with closed-end loans, where the terms of the loan set the amount and timing of payments at the outset, the terms of open-end credit allow for significant variation in the amounts of a consumer's payments, depending largely on the consumer's use of the available credit. As discussed below, proposed § 1041.16(c)(2) would require lenders to furnish any update to information previously furnished under proposed § 1041.16(c) within a reasonable period of the event that causes the information previously furnished to be out of date. Accordingly, for example, if the minimum amount due on future payment dates changes because a consumer increases the amount drawn from an open-end loan or pays more or less than the minimum amount due on a particular payment date, proposed § 1041.16(c)(2) would require the lender to furnish an update to the information concerning the minimum amount due on each payment previously furnished pursuant to proposed § 1041.16(c)(1)(viii)(D) to reflect the new minimum amount due on each future payment date. In the event a consumer does not draw on an open-end loan at consummation and the lender cannot calculate the date that each payment on the loan is due or the minimum amount due on each payment date at the time it furnishes information as required under proposed § 1041.16(c)(1)(viii), the Bureau anticipates that the lender would satisfy proposed § 1041.16 by furnishing null values for these fields at consummation, as applicable, and then furnishing updates as necessary based on, for example, the consumer's use of and payments on the loan.

16(c)(2) Information To Be Furnished While Loan Is an Outstanding Loan

Proposed § 1041.16(c)(2) would require lenders to furnish, while a loan is an outstanding loan, any update to information previously furnished pursuant to proposed § 1041.16 within a reasonable period of the event that causes the information previously furnished to be out of date. Proposed comment 16(c)(2)-1 provides examples of scenarios under which proposed § 1041.16(c)(2) would require a lender to furnish an update to information previously furnished. Proposed comment 16(c)(2)-2 clarifies that the requirement to furnish an update to information previously furnished extends to information furnished pursuant to proposed § 1041.16(c)(2).

As described above, each item of information the proposal would require lenders to furnish under § 1041.16(c)(1) is information that strengthens the consumer protections of proposed part 1041. Updates to these items of information could affect a consumer's eligibility for covered loans under the proposal and, thus, the achievement of those protections. Therefore the Bureau believes that such updates should be reflected in a timely manner on a consumer report a lender obtains from a registered information system. However, the Bureau believes that, to the extent furnishing updates would impose burden on lenders, a more flexible timing requirement may be appropriate for furnishing an update than for furnishing information at consummation or when a covered loan ceases to be outstanding. As discussed above and below, the Bureau is proposing that, when a covered loan is originated or ceases to be outstanding, information is furnished no later than the date on which the loan is consummated or ceases to be outstanding, or as close in time as feasible to the specified date. The Bureau believes that, to achieve the consumer protections that are the goals of proposed part 1041, lenders contemplating making covered loans need timely information with respect to the consumer's recent borrowing history, especially concerning whether another covered loan is outstanding. The Bureau believes that a delay in furnishing information reflecting the existence of an outstanding loan of even a short period would be inconsistent with the goals of proposed part 1041. As reflected in comment 16(c)(2)-1, however, the Bureau anticipates that most updates furnished pursuant to proposed § 1041.16(c)(2) will reflect changes to the amount and timing of future payments on a loan. The Bureau believes that providing lenders a reasonable period after the event that causes this type of information previously furnished to be out of date may be appropriate. The Bureau solicits comment on whether the time period within which information would be required to be furnished under proposed § 1041.16(c)(2) is reasonable or whether an alternative period is more appropriate.

The Bureau has considered whether, in addition to requiring updates to information previously furnished, the Bureau should require under this proposal that lenders furnish information regarding payments made on a covered loan while it is outstanding. The Bureau is aware, for example, that lenders that furnish to consumer reporting agencies typically provide periodic updates in account status, including amount paid and current status. In particular, the Bureau has considered whether it should require under this proposal that lenders furnish information concerning any amounts past due on an outstanding covered loan.

Proposed §§ 1041.5(c) and 1041.9(c) would require that a lender make a reasonable projection of the amount and timing of payments due under a consumer's debt obligations. The Bureau believes that requiring the furnishing of information concerning payments made on a covered loan, and especially amounts past due on an outstanding loan, may permit a more precise assessment of a consumer's ability to repay a contemplated loan for purposes of this proposal than the schedule of future payments that would be furnished pursuant to the proposal, and solicits comment on whether this is the case and whether a more precise assessment is needed for purposes of the proposed rule.[876] The Bureau is concerned that requiring lenders to furnish such additional payment information under this proposal could increase furnishing burdens on lenders imposed by the proposal.

The Bureau solicits comment on whether it should require that lenders furnish any additional information about a loan while it is outstanding, including information concerning payments made on the loan. The Bureau also solicits comment on whether, if it were to require such additional furnishing, it should delay the effective date of such a requirement to permit lenders, many of whom would be furnishing information to a consumer reporting agency for the first time pursuant to the proposed rule, additional time to adjust to the requirement to furnish information as proposed.

16(c)(3) Information To Be Furnished When Loan Ceases To Be an Outstanding Loan

Proposed § 1041.16(c)(3) would require that a lender furnish specified information no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date that the loan ceases to be an outstanding loan. In addition to soliciting comment on the specific information required under proposed § 1041.16(c)(3)(i) and (ii), the Bureau generally solicits comment on whether proposed § 1041.16(c)(3) is reasonable and appropriate, including whether the information lenders would be required to furnish when a loan ceases to be an outstanding loan is sufficient to ensure that lenders using consumer reports obtained from registered information systems would have sufficient information to comply with their obligations under the proposal and achieve the consumer protections of proposed part 1041.[877] The Bureau also solicits comment on whether lender access to any additional information concerning a loan at the time it ceases to be an outstanding loan would further the consumer protections of proposed part 1041.

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[876] The Bureau notes that, depending on how a lender treats a missed payment, an amount past due may be reflected in an update to the amount due on a future payment date; for example, if the lender agrees to defer the consumer's obligation to make the payment until the next payment date.

[877] As noted above, compliance with the FCRA may require that information in addition to that specified under the proposal is furnished to registered and provisionally registered information systems. For example, section 623(a)(5) of the FCRA, 15 U.S.C. 1681s-2(a)(5), requires that a person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the date of delinquency on the account.

As discussed above with respect to the timing of furnishing at consummation, the Bureau believes that a real-time or close to real-time furnishing requirement when a loan ceases to be an outstanding loan may be appropriate to achieve the consumer protections of proposed part 1041. Such a requirement would ensure that lenders using consumer reports from a registered information system have timely information about most covered loans made by other lenders to a consumer. Although the Bureau would encourage lenders to furnish information concerning covered loans on a real-time or close to real-time basis, the proposal would permit lenders to furnish the required information on a daily basis or as close in time as feasible to the date the loan ceases to be outstanding. The Bureau solicits comment on whether the time period within which information would be required to be furnished under proposed § 1041.16(c)(3) is reasonable or whether an alternative period is more appropriate. The Bureau further solicits comment on specific circumstances under which furnishing information no later than the date a loan ceases to be an outstanding loan may not be feasible.

16(c)(3)(i)

Proposed § 1041.16(c)(3)(i) would require lenders to furnish the date as of which the loan ceased to be an outstanding loan. This information would enable a registered information system to generate a consumer report that allows a lender to determine whether a prior loan is outstanding, which would enable a lender to comply with, for example, proposed §§ 1041.5(c) and 1041.9(c). This information would also enable a registered information system to generate a consumer report that allows a lender to determine whether a loan the lender is contemplating is part of a loan sequence and the chronology of prior loans within a sequence, which would enable a lender to comply with, for example, several provisions under proposed §§ 1041.6 and 1041.7. A loan sequence is defined in proposed § 1041.2(a)(12), in part, as a series of consecutive or concurrent covered short-term loans in which each of the loans is made while the consumer currently has an outstanding covered short-term loan or within 30 days of the consumer having a previous outstanding covered short-term loan. A lender would need to have information concerning whether a loan is outstanding and the date as of which a prior loan was no longer outstanding to determine whether a contemplated new loan would be part of a loan sequence and, if so, the chronology of the outstanding or prior loan within the sequence (for example, whether the outstanding loan is or prior loan was the second or third loan in the sequence).

16(c)(3)(ii)

Proposed § 1041.16(c)(3)(ii) would require lenders to furnish for a covered short-term loan, when the loan ceases to be an outstanding loan, whether all amounts owed in connection with the loan were paid in full, including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit, and, if all amounts owed in connection with the loan were paid in full, the amount paid on the loan, including the amount financed and charges included in the total cost of credit but excluding any charges excluded from the total cost of credit. This information would enable a registered information system to generate a consumer report that allows a lender to determine whether the exception to a presumption against a consumer's ability to repay the second and any subsequent loans in a loan sequence, provided in proposed § 1041.6(b)(2), applies.

Section 1041.17 Registered Information Systems

As discussed in more detail in the overview of proposed §§ 1041.16 and 1041.17 above, the Bureau is proposing §§ 1041.16 and 1041.17 to ensure that lenders making most covered loans under this proposal have access to timely and reasonably comprehensive information about a consumer's current and recent borrowing history with other lenders. Proposed § 1041.16 would require lenders to furnish information about most covered loans to each information system provisionally registered or registered with the Bureau pursuant to proposed § 1041.17. The furnishing requirement under proposed § 1041.16 would enable a registered information system to generate a consumer report containing relevant information about a consumer's borrowing history, regardless of which lender had made a covered loan to the consumer previously. Under the proposal, a lender contemplating making most covered loans would be required to obtain a consumer report from a registered information system and consider such a report in determining whether the loan could be made, in furtherance of the consumer protections of proposed part 1041.

The proposal would require that the Bureau identify the particular consumer reporting agencies to which lenders must furnish information pursuant to § 1041.16 and from which lenders may obtain consumer reports to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. Proposed § 1041.17 would provide that the Bureau identify these consumer reporting agencies by registering them with the Bureau as "information systems." As described in more detail below, proposed § 1041.17 sets forth proposed processes for registering information systems before and after the furnishing obligations under proposed § 1041.16 take effect and proposed conditions that an entity must satisfy in order to become a registered information system.

17(a) Definitions

17(a)(1) Consumer Report

Proposed § 1041.17(a)(1) would define consumer report by reference to the definition of consumer report in the FCRA.[878] Defining consumer report by reference to the FCRA accurately reflects how the FCRA would apply to provisionally registered and registered information systems, to lenders that furnish information about covered loans to provisionally registered and registered information systems pursuant to proposed § 1041.16, and to lenders that use consumer reports obtained from registered information systems. As discussed above, proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 would require a lender contemplating making most covered loans to a consumer to obtain a consumer report concerning the consumer from a registered information system to enable the lender to determine whether a given loan may be made. Registered information systems providing consumer reports to such lenders would be consumer reporting agencies within the meaning of the FCRA[879] and thus would be subject to all applicable provisions of that statute and its implementing regulations.[880] Lenders obtaining consumer reports from registered information systems would be required to comply with provisions of the FCRA applicable to users of consumer reports, including, for example, the requirement to provide a consumer a notice when taking adverse action with respect to the consumer that is based in whole or in part on information contained in a consumer report.[881] Lenders providing information to provisionally registered and registered information systems as required under proposed § 1041.16 also would be required to comply with the FCRA provisions applicable to furnishers of information to consumer reporting agencies, including a number of requirements relating to the accuracy of information furnished.[882] The Bureau solicits comment on whether defining consumer report by reference to the definition of consumer report in the FCRA is appropriate.

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[878] 15 U.S.C. 1681a(d).

[879] *See* 15 U.S.C. 1681a(f).

[880] *See* 12 CFR part 1022, 16 CFR part 682.

17(a)(2) Federal Consumer Financial Law

Proposed § 1041.17(a)(2) would define Federal consumer financial law by reference to the definition of Federal consumer financial law in the Dodd-Frank Act, 12 U.S.C. 5481(14). This term is defined in the Dodd-Frank Act to include several laws that would be or may be applicable to information systems, including the FCRA. Proposed § 1041.17(b)(4) would require information systems to develop, implement, and maintain a program reasonably designed to ensure compliance with all applicable Federal consumer financial laws. The Bureau believes that defining this term to include all such applicable laws would ensure that information systems have appropriate policies and procedures in place to prevent consumer harms that could result from these systems' collection, maintenance, and disclosure of potentially sensitive consumer information concerning covered loans. The Bureau solicits comment on whether this proposed definition is appropriate.

17(b) Eligibility Criteria for Information Systems

Proposed § 1041.17(b) sets forth conditions that would be required to be satisfied in order for an entity to become a registered or provisionally registered information system pursuant to § 1041.17(c) or (d). These proposed conditions aim to ensure that information systems would enable lender compliance with obligations under with proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 so as to achieve the consumer protections of proposed part 1041 and to confirm that the systems themselves would maintain compliance programs reasonably designed to ensure compliance with applicable laws, including those designed to protect sensitive consumer information. The Bureau solicits comment on the reasonableness and appropriateness of each of the eligibility criteria proposed and also solicits comment on whether the Bureau should require that additional criteria be satisfied before an entity may become a registered or provisionally registered information system pursuant to proposed § 1041.17(b).

During outreach, some consumer advocates have suggested that the Bureau should require, as an eligibility criterion, that an information system may not provide information furnished pursuant to this proposed rule to lenders for purposes of prescreening consumers for eligibility to receive a firm offer of credit.[883] The FCRA imposes various consumer protections relating to consumer report information, including limiting the sale and use of such information to specific permissible purposes. The FCRA and its implementing regulations also codify procedures that must be followed by consumer reporting agencies when providing (and creditors and insurers when using) consumer reports to make unsolicited firm offers of credit or insurance to consumers, and permit consumers to elect to have their names excluded from lists of names provided by a consumer reporting agency for this purpose.[884]

The Bureau recognizes that an information system's provision of prescreened lists based on information furnished pursuant to this proposal may create a risk that an unscrupulous provider of risky credit-related products might use such a list to target potentially vulnerable consumers. At the same time, the Bureau believes that prescreening could prove useful to certain consumers to the extent they needed credit and received firm offers of affordable credit. The Bureau solicits comment on whether to impose restrictions on the use of information furnished pursuant to proposed part 1041 beyond the restrictions contained in the FCRA.

17(b)(1) Receiving Capability

Proposed § 1041.17(b)(1) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it possesses the technical capability to receive information lenders must furnish pursuant to § 1041.16 immediately upon the furnishing of such information. Proposed § 1041.17(b)(1) would require that, when any lender furnishes information as required under proposed § 1041.16(c), the information system is able to immediately receive the information from the lender.

Proposed § 1041.17(b)(1) also would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it uses reasonable data standards that facilitate the timely and accurate transmission and processing of information in a manner that does not impose unreasonable cost or burden on lenders.[885] The Bureau believes that the development of common data standards across information systems would benefit lenders and information systems and intends to foster the development of such common data standards where possible. The Bureau believes that development of these standards by market participants would likely be more efficient and offer greater flexibility and room for innovation than if the Bureau prescribed particular standards in this rule, but solicits comment on whether proposed § 1041.17(b)(1) should require that information systems use particular data standards or transmit and process information furnished in a manner consistent with any particular existing standard.

17(b)(2) Reporting Capability

Proposed § 1041.17(b)(2) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it possesses the technical capability to generate a consumer report containing, as applicable for each unique consumer, all information described in § 1041.16 substantially simultaneous to receiving the information from a lender. Pursuant to the FCRA, an information system preparing a consumer report pursuant to this proposal would be required to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." [886] Proposed comment 17(b)(2)-1 clarifies that technological limitations may cause some slight delay in the appearance of furnished information on a consumer report, but that any delay must reasonable.

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[881] 15 U.S.C. 1681m(a).

[882] *See, e.g.*, 15 U.S.C. 1681s-2(a), (b); 12 CFR 1022.42 and 1022.43.

[883] *See* 15 U.S.C. 1681b(c) (permitting a consumer reporting agency to provide a consumer report in connection with a credit or insurance transaction that is not initiated by the consumer only if the transaction consists of a firm offer of credit or insurance and other conditions are satisfied). In particular, advocates have raised concerns that this information would be provided to loan lead generators. Because lead generators do not make firm offers of credit, a provisionally registered or registered information system that provided a consumer report to a lead generator would be in violation of the FCRA.

[884] *See* 15 U.S.C.1681b(e); 12 CFR 1022.54.

[885] Among other things, these standards must facilitate lender and information system compliance with the provisions of the FCRA and its implementing regulations concerning the accuracy of information furnished.

17(b)(3) Performance

Proposed § 1041.17(b)(3) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it will perform or performs in a manner that facilitates compliance with and furthers the purposes of proposed part 1041. As discussed in more detail above, the Bureau believes that it appears to be an unfair and abusive practice for a lender to make a covered loan without reasonably determining that the consumer has the ability to repay the loan. The Bureau proposes to prevent the abusive and unfair practice by including in this proposal requirements for how a lender must reasonably determine that a consumer has the ability to repay a loan. The Bureau believes that, in order to achieve these consumer protections, a lender must have access to reasonably comprehensive information about a consumer's current and recent borrowing history, including most covered loans made to the consumer by other lenders, on a real-time or close to real-time basis.

In furtherance of these purposes, proposed § 1041.16 would require that lenders furnish information to provisionally registered and registered information systems, and provisions of proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 would require that lenders obtain consumer reports from registered information systems when contemplating making most covered loans. Satisfaction of the eligibility criteria set forth in proposed § 1041.17(b)(3) would require that an information system receive information furnished by lenders and provide consumer reports in a manner that facilitates compliance with and furthers the purposes of this proposal. Proposed comment 17(b)(3)-1 clarifies that the Bureau does not intend that the requirement in proposed § 1041.17(b)(3) would supersede consumer protection obligations imposed upon a provisionally registered or registered information system by other Federal law or regulation and provides an example concerning the FCRA.

17(b)(4) Federal Consumer Financial Law Compliance Program

Proposed § 1041.17(b)(4) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it has developed, implemented, and maintains a program reasonably designed to ensure compliance with all applicable Federal consumer financial laws. This compliance program must include written policies and procedures, comprehensive training, and monitoring to detect and promptly correct compliance weaknesses. Proposed comments 17(b)(4)-1 through -3 provide examples of the policies and procedures, training, and monitoring that would be required under proposed § 1041.17(b)(4).

As discussed above, Federal consumer financial law is defined to include several laws that the Bureau believes would be or may be applicable to information systems, including the FCRA. The details of proposed § 1041.17(b)(4) and the associated commentary are based on the Compliance Management Review examination procedures contained in the Bureau's Supervision and Examination Manual.[887] Proposed § 1041.17(b)(4) aims to ensure that information systems have appropriate policies and procedures in place to comply with applicable Federal consumer financial laws and prevent related consumer harms that could result from the systems' activities under this proposal.[888]

17(b)(5) Independent Assessment of Federal Consumer Financial Law Compliance Program

Proposed § 1041.17(b)(5) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the entity must provide to the Bureau in its application for provisional registration or registration a written assessment of the Federal consumer financial law compliance program described in proposed § 1041.17(b)(4) and that such assessment satisfies certain criteria. The assessment must set forth a detailed summary of the Federal consumer financial law compliance program that the entity has implemented and maintains; explain how the Federal consumer financial law compliance program is appropriate for the entity's size and complexity, the nature and scope of its activities, and risks to consumers presented by such activities; and certify that, in the opinion of the assessor, the Federal consumer financial law compliance program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under all Federal consumer financial laws. The assessment must further certify that it has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor's independent judgment in performing assessments.

Proposed comment 17(b)(5)-1 provides additional information concerning individuals and entities that are qualified to conduct the assessment required under proposed § 1041.17(b)(5). Proposed comment 17(b)(5)-2 clarifies that the written assessment described in proposed § 1041.17(b)(5) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

The written assessment of an entity's Federal consumer financial law compliance program required under proposed § 1041.17(b)(5) would be included in the entity's application for registration pursuant to proposed § 1041.17(c)(2) or for provisional registration pursuant to proposed § 1041.17(d)(1). This written assessment would not be required to be included in an entity's application for preliminary approval for registration pursuant to § 1041.17(c)(1) or provided to the Bureau when a provisionally registered information system becomes registered pursuant to § 1041.17(d)(2). As described further below, information systems would be subject to the Bureau's supervision authority, and the Bureau may periodically review an information system's Federal consumer financial law compliance program pursuant to that authority. The Bureau believes that requiring a written assessment to be submitted with an application for registration pursuant to § 1041.17(c)(2) or provisional registration pursuant to § 1041.17(d)(1) would provide some flexibility for applicants in terms of assessing and presenting their compliance programs at the application stage and would allow for a more streamlined application process. Based on these consideration and the time sensitivity of an application for registration before the effective date of proposed § 1041.16, the Bureau believes that a written assessment by a qualified, objective, independent third-party individual or entity would be a reasonable and appropriate means to ensure that the eligibility criteria in proposed § 1041.17(b)(4) are satisfied at the application stage.

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[886] 15 U.S.C. 1681e(b).

[887] Office of Supervision, Bureau of Consumer Fin. Prot., *Supervision and Examination Manual—* Version 2.0, CMR 5-10 (2012), *available at http://files.consumerfinance.gov/f/201210_cfpb_supervision-and-examination-manual-v2.pdf.* The Bureau's Supervision and Examination Manual is subject to periodic update.

[888] The Bureau expects that an information system also would operate in compliance with all applicable State and local laws, but does not propose to consider such compliance programs as part of the proposed registration requirement.

As discussed below, with respect to entities seeking to become registered prior to the effective date of proposed § 1041.16, the Bureau is proposing to allow an entity 90 days from the date preliminary approval is granted to prepare its application for registration, including obtaining the written assessment required pursuant to proposed § 1041.17(b)(5). The Bureau solicits comment on the proposed requirement for an independent assessment, including the scope of the proposed assessment, the criteria for the assessor, and the timing for obtaining the assessment.

17(b)(6) Information Security Program

Proposed § 1041.17(b)(6) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that it has developed, implemented, and maintains a comprehensive information security program that complies with the Standards for Safeguarding Customer Information, 16 CFR part 314. Generally known as the Safeguards Rule, part 314 sets forth standards for developing, implementing, and maintaining safeguards to protect the security, confidentiality, and integrity of customer information. The Safeguards Rule was promulgated and is enforced by the FTC pursuant to the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 through 6809.[889]

In performing their functions under this proposal, information systems would be collecting, maintaining, and disclosing potentially sensitive consumer information. The security, confidentiality, and integrity of this information are of utmost importance and are essential to the proper functioning of the information sharing framework the Bureau is proposing.[890] An information system that is registered with the Bureau and performing the functions of a registered information system described in this proposal would be subject to the Safeguards Rule, and thus would be required to develop, implement, and maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.[891]

Proposed § 1041.17(b)(6) would help ensure that information systems have adequate policies and procedures in place to comply with the Safeguards Rule and prevent related consumer harms that could result from the systems' activities under this proposal.

17(b)(7) Independent Assessment of Information Security Program

Proposed § 1041.17(b)(7)(i) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the entity must provide to the Bureau in its application for provisional registration or registration and on at least a biennial basis thereafter, a written assessment of the information security program described in proposed § 1041.16(b)(6). Proposed § 1041.17(b)(7)(ii) provides that each written assessment obtained and provided to the Bureau on at least a biennial basis pursuant to proposed § 1041.17(b)(7)(i) must be completed and provided to the Bureau within 60 days after the end of the period to which the assessment applies.

Each assessment would be required to set forth the administrative, technical, and physical safeguards that the entity has implemented and maintains; explain how such safeguards are appropriate to the entity's size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue; explain how the safeguards that have been implemented meet or exceed the protections required by the Standards for Safeguarding Customer Information, 16 CFR part 314; and certify that, in the opinion of the assessor, the information security program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under the Standards for Safeguarding Customer Information, 16 CFR part 314. The assessment would be required to further certify that it has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor's independent judgment in performing assessments.

Proposed comment 17(b)(7)-1 clarifies that the time period covered by each assessment obtained and provided to the Bureau on at least a biennial basis must commence on the day after the last day of the period covered by the previous assessment provided to the Bureau. Proposed comment 17(b)(7)-2 provides examples of individuals and entities that would be qualified to conduct the assessment required under proposed § 1041.17(b)(7). Proposed comment 17(b)(7)-3 clarifies that the written assessment described in § 1041.17(b)(7) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

The Bureau believes that initial and periodic assessments of an information system's compliance with the Safeguards Rule would help ensure that the potentially sensitive consumer information collected, maintained, and disclosed by the information system is and continues to be appropriately protected. As noted above, the Safeguards Rule is enforced by the FTC. Accordingly, the Bureau expects to consult with the FTC in evaluating assessments submitted to the Bureau pursuant to proposed § 1041.16(b)(7). Although the Bureau does not have supervision authority with respect to the Safeguards Rule, acts and practices that violate the Safeguards Rule may also constitute unfair, deceptive, or abusive acts or practices under the Dodd-Frank Act. The Bureau believes that a written assessment by a qualified, objective, independent third-party individual or entity may be a reasonable and appropriate means to help ensure that the eligibility criteria in proposed

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[889] The data security provisions of the GLBA direct the prudential regulators, the SEC, and the FTC to establish and enforce appropriate standards for covered entities relating to administrative, technical and physical safeguards necessary to protect the privacy, security, and confidentiality of customer information. Congress did not provide the Bureau with rulemaking, enforcement, or supervisory authority with respect to the GLBA's data security provisions. 15 U.S.C. 6801(b), 6804(a)(1)(A), and 6805(b). Data security practices that violate those GLBA provisions and their implementing regulations may also constitute unfair, deceptive, or abusive acts or practices under the Dodd-Frank Act, however.

[890] For example, proposed § 1041.17(b)(6) is designed in part to provide assurance to lenders that the customer information they furnish to information systems will be appropriately protected.

[891] Based on the Bureau's outreach to consumer reporting agencies that may be interested in becoming registered information systems and our understanding of the other activities in which they are engaged or plan to be engaged, the Bureau believes it highly unlikely that any provisionally registered information system would not be covered by the Safeguards Rule. Moreover, as noted above, inadequate data security practices may constitute unfair, deceptive, or abusive acts or practices under the Dodd-Frank Act.

§ 1041.17(b)(6) are satisfied at application and on an ongoing basis.

As discussed below, with respect to entities seeking to become registered prior to the effective date of § 1041.16, the Bureau is proposing to allow an entity 90 days from the date preliminary approval is granted to prepare its application for registration, including obtaining the written assessment required pursuant to proposed § 1041.17(b)(7). The Bureau solicits comment on the proposed requirement for an independent assessment, including the scope of the proposed assessment, the criteria for the assessor, and the timing for obtaining the assessment.

17(b)(8) Bureau Supervisory Authority

Proposed § 1041.17(b)(8) would require that, in order for an entity to be eligible to be a provisionally registered or registered information system, the Bureau must determine that the entity acknowledges it is, or consents to being, subject to the Bureau's supervisory authority. As discussed above, the Bureau has supervisory authority under section 1024 of the Dodd-Frank Act over "larger participant[s] of a market for other consumer financial products or services," as the Bureau defines by rule.[892] The Bureau has promulgated a final rule defining larger participants of the market for consumer reporting.[893] The Bureau believes that entities that choose to become provisionally registered and registered information systems would be non-depository institutions and would qualify as larger participants in the market for consumer reporting, and their acknowledgment would reflect that status. However, other entities may consent to the Bureau's supervisory authority as well.

Proposed § 1041.17(b)(8) is designed to facilitate the assessment and detection of risks to consumers that may be posed by provisionally registered and registered information systems, and to ensure that these systems are legitimate entities and are able to perform their obligations to consumers. The Bureau solicits comments on this proposed requirement and on whether any additional eligibility criteria would be appropriate.

17(c) Registration of Information Systems Prior to the Effective Date of § 1041.16

Proposed § 1041.17(c) describes the proposed process for the registration of information systems before the effective date of proposed § 1041.16. Under the proposal, lenders would furnish information to a system that has been registered pursuant to proposed § 1041.17(c)(2) for 120 days or more[894] and would be required to obtain a consumer report from any system registered pursuant to proposed § 1041.17(c)(2) to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. The Bureau is proposing to create a two-stage process to become registered prior to the effective date of proposed § 1041.16: interested entities first would submit to the Bureau an initial application for preliminary approval for registration, and then would submit a full application for registration after receiving preliminary approval and obtaining certain written assessments from third parties concerning their compliance programs.

The deadlines proposed for submission of applications for preliminary approval for registration pursuant to proposed § 1041.17(c)(1) and to be registered pursuant to proposed § 1041.17(c)(2) are designed to ensure that, on the date that proposed § 1041.16 is effective, there are information systems that have been registered for at least 120 days.

17(c)(1) Preliminary Approval

Proposed § 1041.17(c)(1) provides that, prior to the effective date of proposed § 1041.16, the Bureau may preliminarily approve an entity for registration only if the entity submits an application for preliminary approval to the Bureau by the deadline set forth in proposed § 1041.17(c)(3)(i) containing information sufficient for the Bureau to determine that the entity is reasonably likely to satisfy the conditions set forth in proposed § 1041.17(b) by the deadline set forth in proposed § 1041.17(c)(3)(ii). Proposed § 1041.17(c)(3)(i) provides that the deadline to submit an application for preliminary approval for registration pursuant to proposed § 1041.17(c)(1) is 30 days from the effective date of proposed § 1041.17. This application does not need to include the written assessments required under proposed § 1041.17(b)(5) and (b)(7). Proposed comment 17(c)(1)-1 provides that an application for preliminary approval must describe the steps the entity plans to take to satisfy the conditions set forth in proposed § 1041.17(b) as of the deadline to submit its application for registration and the entity's anticipated timeline for such steps. Proposed comment 17(c)(1)-1 also clarifies that the entity's plan must be reasonable and achievable.

The Bureau proposes to require that an entity seeking to be registered prior to the effective date of § 1041.16 first obtain preliminary approval for registration so the Bureau may determine whether the entity is likely to satisfy the criteria set forth in proposed § 1041.17(b) before the entity expends resources to obtain the written assessments required for the application for registration pursuant to proposed § 1041.17(c)(2). The preliminary approval step would also allow the Bureau to engage with entities seeking registration before the effective date at an early stage in the registration process, which would help the Bureau gauge resources needed to ensure that information systems are registered sufficiently in advance of the effective date of proposed § 1041.16 to allow furnishing pursuant to proposed § 1041.16 to commence on the effective date of that section. The Bureau believes this kind of interaction would provide more predictability in the process for both applicants and the Bureau.

The Bureau is proposing to set the deadline to submit an application for preliminary approval for registration under proposed § 1041.17(c)(3)(i) at 30 days after the effective date of proposed § 1041.17, or 90 days after the publication of the final rule in the **Federal Register**. The Bureau believes that, considering the content of the application for preliminary approval, including that the application need not include the written assessments described in proposed § 1041.17(b)(5) and (b)(7), this deadline would provide sufficient time for interested entities to prepare an application for preliminary approval. The Bureau solicits comment on proposed § 1041.17(c)(1), including whether 90 days from the publication of the final rule would be sufficient time to prepare an application for preliminary approval.

17(c)(2) Registration

Proposed § 1041.17(c)(2) provides that, prior to the effective date of § 1041.16, the Bureau may approve the application of an entity to be a registered information system only if the entity received preliminary approval pursuant to proposed § 1041.17(c)(1) and the entity submits an application to be a registered information system to the Bureau by the deadline set forth in proposed § 1041.17(c)(3)(ii) that contains information sufficient for the Bureau to determine that the entity satisfies the conditions set forth in proposed § 1041.17(b). Proposed

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[892] 12 U.S.C. 5514(a)(1)(B) and (a)(2).

[893] 12 CFR part 1090; Defining Larger Participants of the Consumer Reporting Market, 77 FR 42873 (July 20, 2012).

[894] *See* proposed § 1041.16(b)(1)(i).

§ 1041.17(c)(2) further provides that the Bureau may require additional information and documentation to facilitate this determination or otherwise to assess whether registration of the entity would pose an unreasonable risk to consumers. The Bureau expects that it would require as part of an entity's application for registration information concerning any recent judgment, ruling, administrative finding, or other determination that the entity has not operated in compliance with all applicable consumer protection laws. The Bureau solicits comment on whether there are other specific items of information it should require as part of an application.

Proposed § 1041.17(c)(3)(ii) provides that the deadline to submit an application to be a registered information system pursuant to proposed § 1041.17(c)(2) is 90 days from the date preliminary approval for registration is granted. Proposed comment 17(c)(2)-1 provides that the application for registration must succinctly and accurately convey the required information, and must include the written assessments described in proposed §§ 1041.17(b)(5) and (b)(7).

The Bureau solicits comment on proposed § 1041.17(c)(2), including on whether 90 days is sufficient time to obtain the written assessments described in proposed §§ 1041.17(b)(5) and (b)(7).

17(c)(3) Deadlines

Proposed § 1041.17(c)(3)(i) and (ii) provide that the deadline to submit an application for preliminary approval for registration pursuant to proposed § 1041.17(c)(1) is 30 days from the effective date of proposed § 1041.17 and that the deadline to submit an application to be a registered information system pursuant to proposed § 1041.17(c)(2) is 90 days from the date preliminary approval for registration is granted. Proposed § 1041.17(c)(3)(iii) provides that the Bureau may waive the deadlines set forth in proposed § 1041.17(c)(3). The proposed deadlines are designed to allow entities seeking to become registered prior to the effective date of proposed § 1041.16 adequate time to prepare their applications, and the Bureau adequate time to review applications, so that information systems may be registered sufficiently in advance of the effective date of proposed § 1041.16 to allow furnishing pursuant to that section to begin as soon as that section is effective. As discussed above, the proposed deadlines are based on the Bureau's proposal to provide a 15-month implementation period between publication of the final rule and the effective date of proposed § 1041.16. The Bureau solicits comment on whether the deadlines under proposed § 1041.17(c)(3) are reasonable and achievable.

17(d) Registration of Information Systems on or After the Effective Date of § 1041.16

Proposed § 1041.17(d) describes the proposed process for the registration of information systems on or after the effective date of proposed § 1041.16. The process would involve two steps: An entity first would be required apply to become a provisionally registered information system and then, after it had been provisionally registered for a period of time, it automatically would become a fully registered information system. Under the proposal, lenders would be required to furnish information to a system that has been provisionally registered pursuant to proposed § 1041.17(d)(1) for 120 days or more or subsequently has become registered pursuant to proposed § 1041.17(d)(2),[895] but could not rely on consumer reports from a provisionally registered system to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10 until the system has become fully registered pursuant to proposed § 1041.17(d)(2). The proposed period between provisional registration and full registration would be 180 days, to provide 120 days for onboarding and 60 days of furnishing.

Proposed § 1041.17(d) does not set forth any application deadlines; entities seeking to become registered on or after the effective date of § 1041.16 could apply to do so at any time. However, in order to permit lenders time to adjust to furnishing to information systems that are registered pursuant to proposed § 1041.17(c)(2), before the effective date of proposed § 1041.16, the Bureau anticipates that it would not provisionally register any information systems during the first year that proposed § 1041.16 is in effect. The Bureau solicits comment on whether such a pause on provisional registration would be appropriate and whether one year is an appropriate length of time for such a pause.

17(d)(1) Provisional Registration

Proposed § 1041.17(d)(1) provides that, on or after the effective date of § 1041.16, the Bureau may approve the application of an entity to be a provisionally registered information system only if the entity submits an application to the Bureau that contains information sufficient for the Bureau to determine that the entity satisfies the conditions set forth in proposed § 1041.17(b). Proposed § 1041.17(d)(1) further provides that the Bureau may require additional information and documentation to facilitate this determination or otherwise assess whether provisional registration of the entity would pose an unreasonable risk to consumers. The Bureau expects that it would require as part of an entity's application for provisional registration information concerning any recent judgment, ruling, administrative finding, or other determination that the entity has not operated in compliance with all applicable consumer protection laws. The Bureau solicits comment on whether there are other specific items of information it should require as part of an application. Proposed comment 17(d)(1)-1 provides that the application for registration must succinctly and accurately convey the required information, and must include the written assessments described in proposed § 1041.17(b)(5) and (b)(7).

The Bureau solicits comment on proposed § 1041.17(d)(1), including on whether an entity seeking to be provisionally registered on or after the effective date of proposed § 1041.16 should have the option of first obtaining preliminary approval to be provisionally registered or pursuing an alternative procedure that would allow the entity to receive feedback from the Bureau as to whether the Bureau believes the entity is likely to satisfy the criteria set forth in proposed § 1041.17(b) before the entity expends resources to obtain the written assessments required to be submitted with the application for provisional registration pursuant to proposed § 1041.17(d)(1).

17(d)(2) Registration

Proposed § 1041.17(d)(2) provides that an information system that is provisionally registered pursuant to proposed § 1041.17(d)(1) would automatically become a registered information system pursuant to § 1041.17(d)(2) upon the expiration of the 180-day period commencing on the date the information system is provisionally registered. Once a system is registered pursuant to proposed § 1041.17(d)(2), lenders would be permitted to rely on a consumer report generated by the system to satisfy their obligations under proposed §§ 1041.5 through 1041.7, 1041.9, and 1041.10. Proposed § 1041.17(d)(2) provides that, for purposes of § 1041.17(d), an information system is provisionally registered on the date that the Bureau publishes notice of such provisional registration on the Bureau's Web site.

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[895] *See* proposed § 1041.16(b)(1)(ii).

17(e) Denial of Application

Proposed § 1041.17(e) provides that the Bureau will deny the application of an entity seeking preliminary approval for registration pursuant to proposed § 1041.17(c)(1), registration pursuant to proposed § 1041.17(c)(2), or provisional registration pursuant to proposed § 1041.17(d)(1) if the Bureau determines that: The entity does not satisfy the conditions set forth in proposed § 1041.17(b), or, in the case of an entity seeking preliminary approval for registration, is not reasonably likely to satisfy the conditions as of the deadline set forth in proposed § 1041.17(c)(3)(ii); the entity's application is untimely or materially inaccurate or incomplete; or preliminary approval, provisional registration, or registration would pose an unreasonable risk to consumers.

The Bureau solicits comment on proposed § 1041.17(e), including on whether an application should be denied on any additional grounds. Specifically, the Bureau solicits comment on whether an application should be denied if the Bureau determines that, based on the number of information systems registered and provisionally registered at the time an application is received, provisional registration or registration of the entity would impose unwarranted cost or burden on lenders.

17(f) Notice of Material Change

Proposed § 1041.17(f) would require that an entity that is a provisionally registered or registered information system provide to the Bureau in writing a description of any material change to information contained in its application for registration submitted pursuant to proposed § 1041.17(c)(2) or provisional registration submitted pursuant to proposed § 1041.17(d)(1), or to information previously provided to the Bureau pursuant to proposed § 1041.17(f), within 14 days of such change.

As described above, the eligibility criteria set forth in proposed § 1041.17(b) aim to ensure that information systems would enable lender compliance with this proposal and to confirm that the systems themselves maintain compliance programs reasonably designed to ensure compliance with applicable laws, including those designed to protect sensitive consumer information. Information contained in an application for provisional registration or registration would be relied upon by the Bureau in determining whether the applicant satisfies the conditions set forth in proposed § 1041.17(b). Accordingly, the Bureau believes it may be appropriate to require that it be notified in writing of any material change in such information within a reasonable period of time. The Bureau solicits comment on whether 14 days is a reasonable period of time to provide such notice.

17(g) Revocation

Proposed § 1041.17(g)(2) would provide that the Bureau would suspend or revoke an entity's preliminary approval for registration, provisional registration, or registration, if it determines: that the entity has not satisfied or no longer satisfies the conditions described in proposed § 1041.17(b) or has not complied with the requirement described in proposed § 1041.17(f); or that preliminary approval, provisional registration, or registration of the entity poses an unreasonable risk to consumers. Proposed § 1041.17(g)(2) would provide that the Bureau may require additional information and documentation from an entity if it has reason to believe suspension or revocation under proposed § 1041.17(g)(1) may be warranted. Proposed § 1041.17(g)(3) would provide that, except in cases of willfulness or those in which the public interest requires otherwise, prior to suspension or revocation under proposed § 1041.17(g)(1), the Bureau would provide written notice of the facts or conduct that may warrant the suspension or revocation and an opportunity for the entity to demonstrate or achieve compliance with proposed § 1041.17 or otherwise address the Bureau's concerns. Proposed § 1041.17(g)(4) would provide that the Bureau also would revoke an entity's preliminary approval for registration, provisional registration, or registration if the entity submits a written request to the Bureau that its preliminary approval, provisional registration, or registration be revoked.

Proposed § 1041.17(g)(5) would provide that, for purposes of sections §§ 1041.5 through 1041.7, 1041.9, and 1041.10, which require a lender making most covered loans to obtain and consider a consumer report from a registered information system, suspension or revocation of an information system's registration would be effective five days after the date that the Bureau publishes notice of the suspension or revocation on the Bureau's Web site. The Bureau believes that a delay of five days between the date that the Bureau publishes on its Web site notice of the suspension or revocation of an information system's registration and the effective date of the revocation for purposes of the proposed provisions requiring lenders to obtain and consider a consumer report from a registered information system is appropriate to ensure that lenders receive sufficient notice of the suspension or revocation to arrange to obtain consumer reports from another registered information system. Proposed § 1041.17(g)(5) would also provide that, for purposes of proposed § 1041.16(b)(1), suspension or revocation of an information system's provisional registration or registration would be effective on the date that the Bureau publishes notice of the revocation on the Bureau's Web site. Finally, proposed § 1041.17(g)(5) provides that the Bureau would also publish notice of a suspension or revocation in the **Federal Register**.

As discussed above, the Bureau believes that publication of a notice on its Web site may be the most effective way to ensure that lenders receive notice of the suspension or revocation of an information system's provisional registration or registration. If proposed § 1041.17(g) is adopted, the Bureau expects that it would establish a means by which lenders could sign up to receive email notifications if and when an information system has had its provisional registration or registration revoked. The Bureau also expects that it would do outreach to trade associations and otherwise take steps to ensure that lenders covered by the rule are aware when an information system's provisional registration or registration is revoked. Also, pursuant to proposed § 1041.16(b)(2), the Bureau would maintain on its Web site a current list of provisionally registered and registered information systems.

The Bureau solicits comment on proposed § 1041.17(g), including on whether the Bureau should revoke preliminary approval, provisional registration, or registration on any additional grounds. The Bureau also solicits comment on additional ways it might inform lenders when an information system's provisional registration or registration is revoked.

Section 1041.18 Compliance Program and Record Retention

The Bureau proposes to require a lender that makes a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with proposed part 1041 and that are appropriate to the size and complexity of the lender and its affiliates and the nature and scope of their covered loan activities. The Bureau also proposes to require a lender to retain evidence of compliance with the requirements in proposed part 1041 for 36 months after the date a covered loan ceases to be an outstanding loan. Specifically, the Bureau proposes to require a lender to retain several types of documentation and loan-level records. The Bureau is proposing both requirements pursuant to authority to prevent unfair or abusive acts or practices under Section 1031 of the Dodd-Frank Act and for the reasons discussed below.

The Bureau believes that the proposed requirement to develop and follow written policies and procedures would help foster compliance with proposed part 1041.[896] Proposed part 1041 sets forth detailed ability-to-repay and payment collection requirements that are generally more comprehensive than the requirements in States that permit lenders to make covered loans.[897] To make covered loans that comply with proposed part 1041 when they are originated and when they are outstanding, lenders would need to develop written policies and procedures to reasonably ensure that their staff understands the proposed requirements and conducts covered loan activities in accordance with the proposed requirements. In facilitating lender compliance with the requirements in proposed part 1041, the proposed compliance program requirements would help to prevent the identified unfair and abusive acts and practices in proposed part 1041.

Based on the Bureau's supervisory experience to date in examining certain payday lenders and general market outreach, the Bureau believes it may be useful to provide greater specificity as to the record retention requirement than is typical in many other Federal consumer financial regulations, which are phrased in more general terms.[898] In the Bureau's experience, current record retention practices vary widely across the industry depending on lender business practices, technology systems, State regulatory requirements, and other factors.[899] Particularly given that ability-to-repay determinations would likely involve different levels of automation and analysis from lender to lender, the Bureau believes that providing an itemized framework listening the nature and format of records that must be retained would help to reduce regulatory uncertainty and to facilitate supervision by the Bureau and other regulators. The Bureau notes that the level of detail in the proposed record retention requirements is similar to the level of detail in the recordkeeping obligations in the small-dollar lending statutes and regulations of some States.[900]

Given that proposed part 1041 would impose requirements tied to, among other things, checking the records of the lenders and its affiliates regarding a consumer's borrowing history and verifying a consumer's income and major financial obligations, the Bureau believes the proposed record retention requirements in § 1041.18(b) would assist a lender in complying with the requirements in proposed part 1041. By providing a non-exhaustive list of records that would need to be retained in proposed § 1041.18(b)(1) through (b)(5), proposed § 1041.18(b) would help covered persons determine whether a contemplated covered loan would comply with the requirements in proposed part 1041 and aid covered persons in complying with the record retention requirements in proposed § 1041.18(b). Furthermore, the proposed record retention requirements would support the external supervision of lenders for compliance with proposed part 1041. In facilitating lender compliance and helping the Bureau and other regulators assess compliance with the requirements in proposed part 1041, the proposed record retention requirements would help prevent and deter the identified unfair and abusive acts and practices in proposed part 1041.

In the Small Business Review Panel Outline, the Bureau was considering whether to propose requiring lenders to make periodic reports on reborrowing and default rates for their covered loan portfolios. After further consideration, the Bureau has decided not to include such a reporting requirement in this proposal. The Bureau believes that individual regulators, including the Bureau, may want different information for different supervisory and monitoring purposes and may prefer to wait until the proposal has been finalized and even taken effect before imposing a reporting requirement. As such, the Bureau believes it would be premature to establish a reporting requirement in proposed § 1041.18.

The Bureau seeks comment generally on benefits for lender compliance and external supervision from proposed § 1041.18 and also the costs and other burdens that would be imposed on lenders, including small entities, by proposed § 1041.18. The Bureau also seeks comment on the specific requirements under proposed § 1041.18, as discussed in more detail in the section-by-section analysis below. Furthermore, the Bureau seeks comment on current reporting requirements under State, local, or tribal laws and regulations for lenders that make covered loans, including on the scope and frequency of such requirements.

18(a) Compliance Program

The Bureau proposes to require a lender making a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with proposed part 1041 and that are appropriate to the size and complexity of the lender and its affiliates and the nature and scope of their covered loan activities. Proposed comment 18(a)-1 clarifies the proposed requirement to develop and follow written policies and procedures that are reasonably designed to ensure a lender's compliance with the requirements in proposed part 1041. Proposed comment 18(a)-2 presents examples of written policies and procedures a lender would need to develop and follow based on the particular types of covered loans it makes.

Given that proposed part 1041 would set forth broad requirements for making covered loans and attempting to withdraw funds from consumers' accounts, the Bureau believes that a lender would need to develop written policies and procedures that are tailored to the business model of the lender and its affiliates in order to comply with the proposed requirements. These written policies and procedures would help to ensure that the lender's staff understands and follows the applicable requirements in proposed part 1041. The Bureau believes that appropriate written policies and procedures would help prevent the identified unfair and abusive practices. Lenders would review the requirements of the rule that are applicable to them and formulate written policies and procedures appropriate for their mix of covered loans in order to comply with the rule. In complying with these written policies and procedures, lenders would reduce the likelihood of committing the unfair and abusive acts identified in proposed part 1041.

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[896] A written policies and procedures requirement is a requirement in other Bureau rules. *E.g.*, Regulation E, 12 CFR 1005.33(g)(1).

[897] *See* discussion of current regulatory environment by product type in part II above.

[898] Record retention necessary to prove compliance with a rule is a common requirement across many of the Bureau's rules. *E.g.*, Regulation B, 12 CFR 1002.12; Regulation Z, 12 CFR 1026.25.

[899] Bureau of Consumer Fin. Prot., *Supervisory Highlights*, at 16 (Spring 2014) ("At multiple lenders, policies and procedures for record retention either did not exist or were not followed, leading to incomplete record destruction logs and improperly destroyed records.").

[900] *See, e.g.*, Colo. Code Regs. § 902-1-10; Wash. Admin. Code § 208-630-610.

The Bureau expects that a lender would need to develop and follow reasonable policies and procedures reasonably designed to achieve compliance, as applicable, with the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and proposed §§ 1041.9 and 1041.10; conditional exemptions for certain covered loans in proposed §§ 1041.7, 1041.11, and 1041.12; payments requirements in proposed §§ 1041.14 and 1041.15; and requirements on furnishing loan information to registered and provisionally registered information systems in proposed § 1041.16. The Bureau believes that a lender that makes several types of covered loans would have to develop and follow broader and more sophisticated written policies and procedures than a lender that makes only one type of covered loan. For example, a lender that makes covered loans *only* under the conditional exemption in proposed § 1041.7 would have to develop and follow policies and procedures reasonably designed to achieve compliance with the requirements in proposed § 1041.7, in addition to written policies and procedures for other applicable requirements in proposed part 1041 such as the requirements in proposed §§ 1041.14, 1041.15, and 1041.16. Such a lender, however, would not have to develop and follow policies and procedures reasonably designed to achieve compliance with the ability-to-repay requirements for covered short-term loans in proposed §§ 1041.5 and 1041.6.

The Bureau seeks comment on current compliance programs among lenders that make covered loans, including on the level of detail in written policies and procedures and on training and other programs to ensure that lender staff understands and complies with these written policies and procedures. The Bureau also seeks comment on the benefits and costs and other burdens of the proposed requirement for a lender to develop and follow written policies and procedures that are reasonably designed to ensure compliance with proposed part 1041. Furthermore, the Bureau seeks comment on whether a lender should be required to develop a compliance management system or other such system that would enhance internal compliance processes.

18(b) Record Retention

Proposed § 1041.18(b) would require a lender to retain evidence of compliance with proposed part 1041 for 36 months after the date a covered loan ceases to be an outstanding loan. The Bureau believes, in general, that the proposed record retention period is an appropriate one. The proposed retention period would give the Bureau and other Federal and State enforcement agencies time to examine and conduct enforcement investigations in the highly fragmented small-dollar lending market and help prevent and deter the identified unfair and abusive acts in proposed part 1041. The proposed requirement to retain records for 36 months after a covered loan ceases to be an outstanding loan would also not appear to impose an undue burden on a lender. The Bureau believes that the proposed record retention requirements would promote effective and efficient enforcement and supervision of proposed part 1041, thereby deterring and preventing the unfair and abusive acts the Bureau has proposed to identify.

As detailed further below, the Bureau is proposing to specify requirements as to the format in which certain records are retained. In particular, the proposed approach would provide more flexibility as to how lenders could retain the loan agreement and documentation obtained in connection with a covered loan from the consumer or third parties, while requiring that the lender retain various other records that it generates in the course of making and servicing loans in an electronic tabular format such as a spreadsheet or database, so as to facilitate analysis both by the lender and by external supervisors. The Bureau is attempting to strike a balance that would allow lenders substantial flexibility to retain records in a way that would reduce potential operational burdens while also facilitating access and use by the lender and regulators. For example, the proposed requirements would allow lenders to create multiple spreadsheets or databases to capture related sets of information, so long as the materials could be cross-linked through unique loan and consumer identifiers.

The Bureau seeks comment on the appropriateness of requiring lenders to retain loan-level records for 36 months after the date a covered loan ceases to be an outstanding loan. Specifically, the Bureau seeks comment on the incremental benefits and costs of having a longer or shorter period of retention for loan-level records. The Bureau also seeks comment on the proposed prescriptive approach to record retention and whether a general record retention requirement, as in Regulation Z,[901] would be more appropriate. Furthermore, the Bureau seeks comment on whether and how, if at all, the record retention requirements in proposed § 1041.18(b) should be modified for lenders that would rely on a third-party service provider to determine, for example, a consumer's ability to repay a covered short-term loan under the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6. The Bureau seeks comment on existing record retention practices among lenders that make covered loans, including lenders' current practices as to retaining such records today, including the systems used, the retention periods, and their current ability to analyze such information. The Bureau also seeks comment on existing record retention practices among lenders that are subject to reporting requirements at the State, local, or tribal level. The Bureau also seeks comment on the record retention practices among lenders that currently evaluate a consumer's ability to repay on covered loans.

18(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With a Covered Loan

Proposed § 1041.18(b)(1) would require a lender for a covered loan either to retain the original version or to be able to reproduce an image of the loan agreement and certain documentation obtained from the consumer or third parties in connection with a covered loan, including, as applicable, the items listed in § 1041.18(b)(1)(i) through (v). Under proposed § 1041.18(b)(1)(i), a lender would have to retain a consumer report obtained from an information system registered pursuant to proposed § 1041.17(c)(2) or (d)(2). Under proposed § 1041.18(b)(1)(ii), a lender would have to retain verification evidence, as described in proposed §§ 1041.5(c)(3)(ii) and 1041.9(c)(3)(ii). Under proposed § 1041.18(b)(1)(iii), a lender would have to retain any written statement obtained from the consumer, as described in § 1041.5(c)(3)(i) and § 1041.9(c)(3)(i). Under proposed § 1041.18(b)(1)(iv), a lender would have to retain authorization of an additional payment transfer, as described in § 1041.14(c)(3)(iii). Under proposed § 1041.18(b)(1)(v), a lender would have to retain an underlying one-time electronic transfer authorization or underlying signature check, as described in § 1041.14(d)(2).

Proposed comment 18(b)(1)-1 states that the listed items are non-exhaustive and that the lender may need to retain additional documentation to show compliance with the requirements in proposed part 1041. Proposed comment 18(b)(1)-2 describes the acceptable forms of retaining the loan agreement and documentation obtained when making a covered loan and provides examples of what would constitute compliance with proposed § 1041.18(b)(1). Proposed comment 18(b)(1)(ii)-1 clarifies the requirement under proposed § 1041.18(b)(1)(ii) and provides a cross-reference to comments in proposed §§ 1041.5(c)(3)(ii) and 1041.9(c)(3)(ii) that list types of evidence that can be used to verify the amount and timing of a consumer's net income and payments for major financial obligations. Proposed comment 18(b)(1)(ii)-2 clarifies the application of proposed § 1041.18(b)(1)(ii) to a covered loan made under either proposed § 1041.5 or proposed § 1041.9 for which a lender relies on an estimated housing expense for the consumer.

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[901] Regulation Z, 12 CFR 1026.25.

The Bureau believes that retention of these items in paper or electronic form would facilitate lender compliance and aid external supervision of lenders. Retention of these items would allow the Bureau to determine whether a lender has complied with the requirements in proposed part 1041, including by sampling a lender's electronic, tabular records to see if selected records under proposed § 1041.18(b)(2) and (b)(3) match the information in the verification evidence that the lender obtained from the consumer or a third party. The record retention requirements in proposed § 1041.18(b)(1) would thereby help prevent and deter the identified unfair and abusive practices in proposed part 1041.

At the same time, particularly given that most of the items listed would be provided initially to the lender by the consumer or a third party in a variety of formats, the Bureau believes that it is important to provide lenders with flexibility as to the form in which they retain the material. For example, the proposed approach would not require that lenders convert paper documentation received from a consumer or a third party into electronic form. The Bureau considered mandating a particular format, but believes that requiring a lender to retain the loan agreement and documentation in electronic form, searchable or otherwise, would add compliance burdens for lenders without necessarily providing significant benefits for supervision and enforcement activities.

The Bureau believes that requiring a lender to retain copies of the notices provided under the requirements in proposed § 1041.7, with regard to the features of certain covered short-term loans, and the requirements in proposed § 1041.15, with regard to upcoming payment withdrawal attempts and prohibitions on further payment withdrawal attempts, would impose significant compliance burdens on lenders. At the same time, the Bureau believes that retention of these notices would provide limited benefits in facilitating the Bureau's supervision and enforcement activities. For purposes of this proposed § 1041.18(b)(1), the Bureau has not proposed the retention of each individual notice provided to consumers. However, under proposed § 1041.18(a), a lender that makes covered loans subject to the requirements in proposed § 1041.7 or proposed § 1041.15 would have to develop and follow written policies and procedures that ensure that consumers were provided the required disclosures.

The Bureau seeks comment on proposed § 1041.18(b)(1), including on the benefits and costs and other burdens of retaining the loan agreement and documentation obtained in connection with a covered loan. The Bureau also seeks comment on what additional costs and other burdens a requirement to retain the loan agreement and documentation obtained in connection with a covered loan in electronic form or searchable electronic form, such as PDF, would impose on a lender. The Bureau also seeks comment specifically on whether a lender should be required to retain notices provided to consumers under the requirements in proposed §§ 1041.7 and 1041.15 and initial authorizations of payment transfers obtained from the consumer.

18(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Loan

Proposed § 1041.18(b)(2) would require a lender to retain electronic records in tabular format of certain calculations and determinations that it would be required to make in the process of making a covered loan. A lender would, at a minimum, be required to retain the records listed in proposed § 1041.18(b)(2). Proposed § 1041.18(b)(2)(i) and (b)(2)(ii) would provide that for a covered loan subject to the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and §§ 1041.9 and 1041.10, respectively, a lender would have to retain a record of the projections that the lender made of the consumer's net income and major financial obligations, calculated residual income during the relevant time period, and the lender's estimated basic living expenses for the consumer. Proposed § 1041.18(b)(2)(iii) would provide that a lender would have to retain a record of any non-covered bridge loan made to the consumer in the 30 days preceding the new covered loan.

Proposed comment 18(b)(2)-1 states that the listed records are non-exhaustive and that the lender may need to retain additional records to show compliance with the requirements in proposed part 1041. Proposed comment 18(b)(2)-2 explains the meaning of retaining records in electronic, tabular format and also explains that the records required in proposed § 1041.18(b)(2) would not have to be retained in a single, combined spreadsheet or database with the records required in proposed § 1041.18(b)(3) through (b)(5). Proposed comment 18(b)(2)-2 also clarifies that proposed § 1041.18(b)(2) would require a lender to be able to associate the records for a covered loan in proposed § 1041.18(b)(2) with unique loan and consumer identifiers in proposed § 1041.18(b)(4).

The Bureau believes that retention of these records would facilitate lender compliance and also be essential for examining a lender's compliance with, among other proposed requirements, the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and §§ 1041.9 and 1041.10. A consumer's projected net income and major financial obligations are central to the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and §§ 1041.9 and 1041.10. Retention of these records in electronic, tabular format would support lender compliance with the requirements in proposed part 1041 and also permit the Bureau to evaluate, among other things, whether a lender made a reasonable determination of a consumer's ability to repay a loan. The Bureau believes it would be relatively simple for lenders to retain these records in a spreadsheet or other electronic, tabular format, and that such a format would facilitate lender compliance and external supervision. The record retention requirements in proposed § 1041.18(b)(2) would thereby help prevent and deter the identified unfair and abusive practices in proposed part 1041.

The Bureau seeks comment on proposed § 1041.18(b)(2), including on the benefits and costs and other burdens of retaining the proposed records on origination calculations and determinations for a covered loan. The Bureau also seeks comment on the benefits and costs and other burdens of retaining these records in electronic, tabular format.

18(b)(3) Electronic Records in Tabular Format for a Consumer Who Qualifies for an Exception to or Overcomes a Presumption of Unaffordability for a Covered Loan

Proposed § 1041.18(b)(3) would require a lender to retain electronic records in tabular format for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan in § 1041.6 or § 1041.10. A lender would, at a minimum, be required to retain the records listed in proposed § 1041.18(b)(3).

For a consumer who qualifies for the exception in proposed § 1041.6(b)(2) to the presumption of unaffordability in § 1041.6(b)(1) for a sequence of covered short-term loans, proposed § 1041.18(b)(3)(i) would require a lender to retain records on the percentage difference between the amount to be paid in connection with the new covered short-term loan (including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit) and either the amount paid in full on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit) or the amount the consumer paid on the prior covered short-term loan that is being rolled over or renewed (including the amount financed and charges included in the total cost of credit but excluding any charges that are excluded from the total cost of credit), the loan term in days of the new covered short-term loan, and the term in days of the period over which the consumer made payment or payments on the prior covered short-term loan. For a consumer who overcomes a presumption of unaffordability in proposed § 1041.6 for a covered short-term loan, proposed § 1041.18(b)(3)(ii) would require a lender to retain records of the dollar difference between the consumer's financial capacity projected for the new covered short-term loan and the consumer's financial capacity since obtaining the prior loan.

For a consumer who qualifies for the exception in proposed § 1041.10(b)(2) to the presumption of unaffordability in § 1041.10(b)(1) for a covered longer-term loan following a covered short-term or covered longer-term balloon-payment loan, proposed § 1041.18(b)(3)(iii) would require a lender to retain records on the percentage difference between the size of the largest payment on the covered longer-term loan and the largest payment on the prior covered short-term or covered balloon-payment loan. For a consumer who qualifies for the exception in proposed § 1041.10(c)(2) to the presumption of unaffordability in § 1041.10(c)(1) for a covered longer-term loan during an unaffordable outstanding loan, proposed § 1041.18(b)(3)(iv) would require a lender to retain records on the percentage difference between the size of the largest payment on the covered longer-term loan and the size of the smallest payment on the outstanding loan and the percentage difference between the total cost of credit on the covered longer-term loan and the total cost of credit on the outstanding loan. For a consumer who overcomes a presumption of unaffordability in proposed § 1041.10 for a covered longer-term loan, proposed § 1041.18(b)(3)(v) would require a lender to retain records of the dollar difference between the consumer's financial capacity projected for the new covered longer-term loan and the consumer's financial capacity during the 30 days prior to the lender's determination.

Proposed comment 18(b)(3)-1 states that the listed records are non-exhaustive and that the lender may need to retain additional records to show compliance with the requirements in proposed part 1041. Proposed comment 18(b)(3)-2 provides a cross-reference to proposed comment 18(b)(2)-2, which explains the meaning of retaining records in electronic, tabular format, and also states that the records required in proposed § 1041.18(b)(3) would not have to be retained in a single, combined spreadsheet or database with the records required in proposed §§ 1041.18(b)(2), 1041.18(b)(4), and 1041.18(b)(5). Proposed comment 18(b)(3)-2 also clarifies that proposed § 1041.18(b)(3) would require a lender to be able to associate the records for a covered loan in proposed § 1041.18(b)(3) with unique loan and consumer identifiers in proposed § 1041.18(b)(4).

The Bureau believes that retention of these records would facilitate lender compliance and also be essential for examining a lender's compliance with the requirements in proposed §§ 1041.6 and 1041.10. Changes in loan terms and to a consumer's projected residual income are central to the requirements in proposed §§ 1041.6 and 1041.10. Retention of these records in electronic, tabular format would support lender compliance with the requirements in proposed §§ 1041.6 and 1041.10 and also permit the Bureau to evaluate whether a lender complied with the requirements in proposed §§ 1041.6 and 1041.10. The Bureau believes it would be relatively simple for lenders to keep these records in a spreadsheet or other electronic, tabular format, and that such a format would facilitate lender compliance and external supervision. The record retention requirements in proposed § 1041.18(b)(3) would thereby help prevent and deter the identified unfair and abusive practices in proposed part 1041.

The Bureau seeks comment on proposed § 1041.18(b)(3), including the benefits and costs and other burdens of retaining the proposed records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan. The Bureau also seeks comment on the benefits and costs and other burdens of retaining these records in electronic, tabular format.

18(b)(4) Electronic Records in Tabular Format Regarding Loan Type and Terms

Proposed § 1041.18(b)(4) would require a lender to retain electronic records in tabular format on a covered loan's type and terms. A lender would, at a minimum, be required to retain the records listed in proposed § 1041.18(b)(4). The proposed records include, as applicable, the information listed in proposed § 1041.16(c)(1)(i) through (iii), including information to uniquely identify the loan and to identify the consumer, § 1041.16(c)(1)(v) through (viii), and § 1041.16(c)(2). These items listed in proposed § 1041.16 would also have to be furnished to registered and provisionally registered information systems for certain covered loans. In addition, a lender would have to retain records on whether the covered loan is made under proposed § 1041.5, proposed § 1041.7, proposed § 1041.9, proposed § 1041.11, or proposed § 1041.12. Furthermore, a lender would have to retain records on the leveraged payment mechanism(s) it obtained from the consumer, whether the lender obtained vehicle security from the consumer, and the loan number in a loan sequence for a covered short-term loan made under either proposed § 1041.5 or proposed § 1041.7. Proposed comment 18(b)(4)-1 states that the listed records are non-exhaustive and that a lender may need to retain additional records to show compliance with the requirements in proposed part 1041. Proposed comment 18(b)(4)-2 provides a cross-reference to proposed comment 18(b)(2)-2, which explains the meaning of retaining records in electronic, tabular form, and also states that the records required in proposed § 1041.18(b)(4) would not have to be retained in a single, combined spreadsheet or database with the records required in proposed § 1041.18(b)(2), (b)(3), and (b)(5).

The Bureau believes that retention of these records would facilitate lender compliance and also be essential for evaluating a lender's compliance with the requirements in proposed part 1041. The Bureau believes that these records on loan type and terms would support lender compliance with the requirements in proposed part 1041 and also aid the Bureau's supervision and enforcement activities, including through the review of records on individual loans and the possible computation of loan performance metrics by covered loan type as described in the section-by-section analysis of proposed § 1041.18(b)(5). The record retention requirements in proposed § 1041.18(b)(4) would thereby help prevent and deter the identified unfair and abusive practices in proposed part 1041.

The Bureau seeks comment on proposed § 1041.18(b)(4), including the benefits and costs and other burdens of retaining the proposed records on loan type and terms. The Bureau also seeks comment on the benefits and costs and other burdens of retaining these records in electronic, tabular format. The Bureau also seeks comment on whether the requirements in proposed § 1041.18(b)(4), in particular the proposed requirement to retain information listed in proposed § 1041.16(c)(1)(i) through (iii), § 1041.16(c)(1)(v) through (viii), and § 1041.16(c)(2), should be modified for a covered longer-term loan made under either proposed § 1041.11 or § 1041.12 for which information is furnished to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis instead of registered and provisionally registered information systems.

18(b)(5) Electronic Records in Tabular Format Regarding Payment History and Loan Performance

Proposed § 1041.18(b)(5) would require a lender to retain electronic records in tabular format on payment history and loan performance for a covered loan. A lender would, at a minimum, be required to retain the records listed in proposed § 1041.18(b)(5). Proposed § 1041.18(b)(5)(i) would require a lender to retain records on the date a payment was received from the consumer or a payment transfer, as defined in § 1041.14(a)(1), was attempted by the lender, the amount of the payment due, the amount of the attempted payment transfer, the amount of payment received or transferred, and the payment channel used for the attempted payment transfer. Proposed § 1041.18(b)(5)(ii) would require a lender to retain records if reauthorization to initiate a payment transfer is obtained from consumer in accordance with requirements in § 1041.14(c) or (d) for an attempt to transfer funds from a consumer's account subject to the prohibition in § 1041.14(b). Proposed § 1041.18(b)(5)(iii) would require a lender to retain records on the maximum number of days, up to 180 days, any full payment, including the amount financed, charges included in the total cost of credit, and charges excluded from the cost of credit, was past due. Proposed § 1041.18(b)(5)(iv) would require a lender to retain records on whether a covered longer-term loan made under proposed § 1041.12 was charged off. Proposed § 1041.18(b)(5)(v) would require a lender to retain records if repossession of a vehicle was initiated on a covered loan with vehicle security. Proposed § 1041.18(b)(5)(vi) would require a lender to retain records on the date of the last or final payment received. Proposed § 1041.18(b)(5)(vii) would require a lender to retain records for the information listed in proposed § 1041.16(c)(3)(i) and (ii), which would also have to be furnished to registered and provisionally registered information systems for certain covered loans.

Proposed comment 18(b)(5)-1 states that the listed records are non-exhaustive and that the lender may need to retain additional records to show compliance with the requirements in the proposed part. Proposed comment 18(b)(5)-2 provides a cross-reference to proposed comment 18(b)(2)-2, which explains the meaning of retaining records in electronic, tabular format, and also states that the records required in proposed § 1041.18(b)(5) would not have to be retained in a single, combined spreadsheet or database with the records required in proposed §§ 1041.18(b)(2), 1041.18(b)(3), and 1041.18(b)(4). Proposed comment 18(b)(5)-2 also clarifies that § 1041.18(b)(5) would require a lender to be able to associate the records for a covered loan in proposed § 1041.18(b)(5) with unique loan and consumer identifiers in proposed § 1041.18(b)(4). Proposed comment 18(b)(5)(iv)-1 explains how a lender would have to retain records on the maximum number of days, up to 180 days, any full payment was past due on a covered loan. Proposed comment 18(b)(5)(v)-1 clarifies that initiation of vehicle repossession would cover actions that deprive or commence the process of depriving the consumer of the use of the consumer's vehicle, including the activation of a lender-installed device that disables the vehicle or a notice that the device will be activated on or after a particular date.

The Bureau believes that these records would facilitate lender compliance and also be essential for evaluating a lender's compliance with the requirements in proposed part 1041 in general and compliance with the requirements in proposed §§ 1041.5 and 1041.6, §§ 1041.9 and 1041.10, § 1041.12, § 1041.14, and § 1041.15 in particular. Proposed § 1041.18(b)(5) would ensure that a lender retained the loan-level records necessary to compute a number of possible performance metrics for each type of loan made. Using the proposed loan-level records, the Bureau could compute measures such as the percentage of covered longer-term loans made under proposed § 1041.9 in a particular period of time that had 90-day delinquencies and, for covered short-term loans that are vehicle title loans, the percentage of such loans in a particular period of time that resulted in the initiation of vehicle repossession. Such performance metrics could be useful measures for the Bureau in conducting enforcement and supervision functions. In particular, the Bureau would be able to evaluate the reasonableness of a lender's ability-to-repay determinations under the requirements in proposed §§ 1041.5 and 1041.6 and proposed §§ 1041.9 and 1041.10. In addition, the proposed record retention requirement would allow a lender to calculate the portfolio default rate calculations required for covered longer-term loans made under proposed § 1041.12. The Bureau believes it would be relatively simple for lenders to keep these records in a spreadsheet or other electronic, tabular format, and that such a format would facilitate lender compliance and external supervision. The Bureau recognizes that substantial parts of these records may be provided by vendors who assist lenders with payment processing functions, but believes that these vendors would likely be able to provide the information to lenders in an electronic tabular format. The record retention requirements in proposed § 1041.18(b)(5) would thereby help prevent and deter the identified unfair and abusive practices in proposed part 1041.

The Bureau seeks comment on proposed § 1041.18(b)(5), including the benefits and costs and other burdens of tracking and retaining any of the proposed records on loan performance and payment history. The Bureau also seeks comment on the benefits and costs and other burdens of retaining these records in electronic, tabular format. The Bureau also seeks comment on whether the requirements in proposed § 1041.18(b)(5), in particular the proposed requirement to retain information listed in proposed § 1041.16(c)(3)(i) and (ii), should be modified for a covered longer-term loan made under either proposed § 1041.11 or § 1041.12 for which information is furnished to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis instead of registered and provisionally registered information systems. Furthermore, the Bureau seeks comment on whether lenders expect to rely on third-party vendors for tracking payment history or other loan performance records for a covered loan, on the ways in which vendors retain and report such data today, and any technological or other issues that would be useful to account for when a lender compiles data from multiple internal and external sources.

Section 1041.19 Prohibition Against Evasion

Proposed § 1041.19 would provide that a lender must not take any action with the intent of evading the requirements of proposed part 1041. Proposed § 1041.19 would complement the specific, substantive requirements of the proposed rule by prohibiting any lender action taken with the intent to evade those requirements. As discussed further below, the Bureau is proposing § 1041.19 based on the Bureau's authority under Dodd-Frank Act section 1022(b)(1) to prevent evasions.

Proposed comment 19-1 clarifies the meaning under proposed § 1041.19 of when a lender action is taken with the intent of evading the requirements of the proposed rule. Specifically, proposed comment 19-1 clarifies that the form, characterization, label, structure, or written documentation in connection with the lender's action shall not be dispositive, and rather the actual substance of the lender's action as well as other relevant facts and circumstances will determine whether the lender's action was taken with the intent of evading the requirements of proposed part 1041. Proposed comment 19-1 also clarifies that if the lender's action is taken solely for legitimate business purposes, the lender's action is not taken with the intent of evading the requirements of proposed part 1041, and that, by contrast, if a consideration of all relevant facts and circumstances reveals the presence of a purpose that is not a legitimate business purpose, the lender's action may have been taken with the intent of evading the requirements of proposed part 1041.[902] Proposed comment 19-1 also clarifies that a lender action taken with the intent of evading the requirements of proposed part 1041 may be knowing or reckless. Furthermore, proposed comment 19-1 clarifies that fraud, deceit, or other unlawful or illegitimate activity may be one fact or circumstance that is relevant to the determination of whether a lender's action was taken with the intent of evading the requirements of the proposed rule, but fraud, deceit, or other unlawful or illegitimate activity is not a prerequisite to such a finding.

Proposed comment 19-2 provides several non-exhaustive examples of lender actions that, depending on the facts and circumstances, may have been taken with the intent of evading the requirements of the proposed rule and thus may be violations of proposed § 1041.19. Proposed comment 19-3 provides an example of a lender action that is not taken with the intent of evasion and thus is not a violation of proposed § 1041.19.

The Bureau is proposing § 1041.19 for two primary reasons. First, the provision would address future lender conduct that is taken with the intent of evading the requirements of the proposed rule but which the Bureau may not, or could not, have anticipated in developing the proposed rule. The proposed rule contains certain requirements that are specifically targeted at potential lender evasion and which rely on the Bureau's authority to prevent evasion under Dodd-Frank Act section 1022(b)(1).[903] However, the Bureau cannot anticipate every possible way in which lenders could evade the requirements of the proposed rule.[904] The Bureau is also concerned about the further complexity that would result from attempting to craft additional rule provisions designed to prevent other conduct taken with the intent of evading the proposed rule. Proposed § 1041.19 would provide flexibility to address future lender conduct that is taken with the intent of evading the proposed rule. By limiting avenues for potential evasion, proposed § 1041.19 would enhance the effectiveness of the proposed rule's specific, substantive requirements, and thereby preserve the consumer protections of the proposed rule.

Second, the Bureau believes that proposed § 1041.19 is appropriate to include in the proposed rule given the historical background of the markets for covered loans. As discussed in Market Concerns—Short-Term Loans, over the past two decades many lenders making loans that would be treated as covered loans under the proposed rule have taken actions to avoid regulatory restrictions at both the State and Federal levels. For example, some lenders have reacted to State restrictions on payday loans by obtaining State mortgage lending licenses and continuing to make short-term, small dollar loans. In Delaware, a State court of chancery recently held that a loan agreement was unconscionable because, among other factors, the court found that the "purpose and effect" of the loan agreement was to evade the State's payday lending law, which includes a cap on the total number of payday loans in a 12-month period and an anti-evasion provision.[905] States also have faced challenges in applying their laws to certain online lenders, including lenders claiming tribal affiliation and offshore lenders. Furthermore, at the Federal level, lenders have been making loans narrowly outside of the scope of regulations to implement the Federal Military Lending Act, passed by Congress in 2006. For example, in response to the MLA regulations prohibiting certain closed-end payday loans of 91 days or less in duration and vehicle title loans of 181 days or less in duration, lenders began offering payday loans greater than 91 days in duration and vehicle title loans greater than 181 days in duration, along with open-end products. The Department of Defense, which was responsible for drafting the MLA regulations, as well as numerous members of Congress concluded that such practices undermine the MLA's consumer protections for service members and their families.[906] Given this historical background, the Bureau believes that the anti-evasion provision in § 1041.19 is appropriate to include in the proposed rule.

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[902] The Bureau notes that even if a lender's action can be shown to have been taken solely for legitimate business purposes—and thus was not taken with the intent of evading the requirements of the proposed rule—the lender's action is not per se in compliance with the proposed rule because, depending on the facts and circumstances, the lender's action may have violated specific, substantive requirements of the proposed rule.

[903] For example, proposed § 1041.7(d) is designed to prevent evasion of the requirements of proposed § 1041.7 through the making of a non-covered bridge loan when a Section 7 loan is outstanding and for 30 days thereafter.

[904] As the Commodity Futures Trading Commission (CFTC) noted in a proposed rulemaking implementing an anti-evasion provision under title VII of the Dodd-Frank Act, "Structuring transactions and entities to evade the requirements of the Dodd-Frank Act could take any number of forms. As with the law of manipulation, the 'methods and techniques' of evasion are 'limited only by the ingenuity of man.'" 76 FR 29818, 29866 (May 23, 2011) (quoting *Cargill* v. *Hardin,* 452 F.2d 1154, 1163 (8th Cir. 1971)). The Bureau's approach to the anti-evasion clause in proposed § 1041.19 has been informed by this CFTC rulemaking, as discussed below.

[905] *See James* v. *National Financial, LLC,* 132 A.3d 799, 834 (Del. Ch. 2016). The lender structured a $200 loan as a 12-month installment loan with interest-only payments followed by a final balloon payment, with an APR of 838.45 percent. *Id.* at 803. The court also found a violation of TILA with regard to the disclosure of the APR in the loan contract. *Id.* at 838-39. This case and the Delaware payday law at issue are also discussed above in part II.

In proposing § 1041.19 and its accompanying commentary, the Bureau is relying on anti-evasion authority under Dodd-Frank Act section 1022(b)(1). As discussed in part IV, Dodd-Frank Act section 1022(b)(1) provides that the Bureau's director may prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." [907]

Anti-evasion provisions are a feature of many Federal consumer financial laws and regulations.[908] In addition, anti-evasion provisions were included in a final rule issued in 2012 by the CFTC under title VII of the Dodd-Frank Act (the CFTC Anti-Evasion Rules).[909]

One of the CFTC Anti-Evasion Rules provides that it is "unlawful to conduct activities outside the United States, including entering into agreements, contracts, and transactions and structuring entities, to willfully evade or attempt to evade any provision of" the Dodd-Frank Act title VII provisions or implementing CFTC regulations [910] and that the "[f]orm, label, and written documentation of an agreement, contract, or transaction, or an entity, shall not be dispositive in determining whether the agreement, contract, or transaction, or entity, has been entered into or structured to willfully evade." [911] Moreover, in the preamble for the final CFTC Anti-Evasion Rules, the CFTC provided interpretive guidance regarding the circumstances that may constitute evasion of the requirements of title VII of the Dodd-Frank Act. The CFTC differentiated between an action taken by a party *solely* for legitimate business purposes, which the CFTC stated would not constitute evasion, and an action taken by a party that based on a "consideration of all relevant facts and circumstances reveals the presence of a purpose that is not a legitimate business purpose," which the CFTC stated may constitute evasion depending on the facts and circumstances.[912] The Bureau believes that the CFTC Anti-Evasion Rules are an informative source of regulatory text and interpretative guidance with regard to agency use of anti-evasion authority granted under the Dodd-Frank Act.[913]

As noted above, proposed comment 19-2 provides several non-exhaustive examples of lender actions that may have been taken with the intent of evading the requirements of the proposed rule and thus may be violations of proposed § 1041.19. Proposed comment 19-2.i provides an example that assumes the following facts: (1) A lender makes non-covered loans to consumers without assessing their ability to repay, with a contractual duration of 46 days or longer and a total cost of credit exceeding a rate of 36 percent per annum, as measured at the time of consummation; (2) as a matter of lender practice for loans with these contractual terms, more than 72 hours after consumers receive the entire amount of funds that they are entitled to receive under their loans, the lender routinely offers consumers a monetary or non-monetary incentive (*e.g.*, the opportunity to skip a payment) in exchange for allowing the lender or its affiliate to obtain a leveraged repayment mechanism or vehicle security, and consumers routinely agree to provide the leveraged payment mechanism or vehicle security; (3) the lender began the practice following the issuance of the final rule that is codified in 12 CFR part 1041; and (4) the lender's prior practice when making loans to consumers with these contractual terms was to require a leveraged payment mechanism or vehicle security at or prior to consummation.

The Bureau believes that the type of loan contract structure at issue in conjunction with the other facts and circumstances presented in proposed comment 19-2.i would indicate that the lender may have taken the action with the intent of evading the requirements of the proposed rule. The loan otherwise would be a covered longer-term loan under proposed § 1041.3(b)(2)(ii) except for the fact that the lender obtains the leveraged payment mechanism or vehicle security more than 72 hours after the consumer has received all loan proceeds; therefore, the lender's action would result in avoidance of the ability-to-repay and other requirements of proposed part 1041. The fact that the lender began offering these incentives to customers routinely as a matter of lender practice following the issuance of the final rule would be relevant toward determining whether the lender's action was taken with the intent of evading the rule, rather than solely for legitimate business purposes. In contrast, if a lender obtains a leveraged payment mechanism or vehicle security from consumers more than 72 hours after the consumers receive all loan proceeds on sporadic occasions as part of individually tailored, reasonable workout agreements, then, absent any other relevant factors,[914] these actions would tend to not raise concerns about the lender's intent to evade the requirements of the proposed rule.

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[906] The Department of Defense amended the MLA regulations in 2015 and the compliance date for the amendments is later this year. *See* 80 FR 43560 (Jul. 22, 2015) (final rule containing amendments). The preamble to the amendments included discussion of comments to the proposed rule from 40 U.S. Senators who wrote the amendments were "essential to preventing future evasions" of the MLA regulations. *Id.* at 43561 (quoting letter from Jack Reed, et al, Nov. 25, 2014).

[907] The Bureau notes that Dodd-Frank Act section 1036(a) separately provides that it shall be unlawful for "any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided." 12 U.S.C. 5536(a)(3). The Bureau is not relying on this authority for proposed § 1041.19 but notes that this statutory provision could be used in an enforcement action to address evasive conduct if a lender's actions were taken with the substantial assistance of a non-covered person.

[908] *See, e.g.,* Fair Credit Reporting Act, 15 U.S.C. 1681s(e)(1) ("The Bureau may prescribe regulations as may be necessary or appropriate to administer and carry out the purposes and objectives of this subchapter, and to prevent evasions thereof or to facilitate compliance therewith.").

[909] *See* 77 FR 48208, 48297-48303 (Dec. 13, 2012) (Final Rule); 76 FR 29818, 29865-68 (May 23, 2011) (Proposed Rule). Section 721(c) of the Dodd-Frank Act required the CFTC to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant" in order "[t]o include transactions and entities that have been structured to evade" subtitle A of title VII of the Dodd-Frank Act, and several other provisions of Dodd-Frank Act title VII reference the promulgation of anti-evasion rules. *See* 77 FR 48208, 48297 (Dec. 13, 2012). The CFTC Anti-Evasion Rules were promulgated as part of a larger rulemaking issued jointly by the CFTC and the Securities and Exchange Commission (SEC) under title VII of the Dodd-Frank Act, which established a comprehensive new regulatory framework for swaps and security-based swaps. Although the larger rule was issued jointly by the CFTC and the SEC, the anti-evasion provisions were adopted only by the CFTC. *Id.* at 48297-48302. The SEC declined to adopt any anti-evasion provisions under its Dodd-Frank Act discretionary anti-evasion authority. *Id.* at 48303.

[910] 17 CFR 1.6(a).

[911] 17 CFR 1.6(b). A separate anti-evasion provision deemed as a swap any agreement, contract, or transaction "that is willfully structured to evade any provision of" subtitle A of title VII. This provision contained similar language as 17 CFR 1.6(b) regarding the "form, label, and written documentation" of the transaction not being dispositive as to the determination of evasion. *See* 17 CFR 1.3(xxx)(6)(i), (iv).

[912] *See* 77 FR at 48301-02; 76 FR at 29867. Among other sources for this distinction, the CFTC described Internal Revenue Service (IRS) guidance on the line between permissible tax avoidance and impermissible tax evasion. *See* 77 FR 48208, 48301-02; 76 FR 29818, 29867. The CFTC also addressed, in response to comments, whether avoidance of regulatory burdens is a legitimate business purpose. The CFTC wrote that the agency "fully expects that a person acting for legitimate business purposes within its respective industry will naturally weigh a multitude of costs and benefits associated with different types of financial transactions, entities, or instruments, including the applicable regulatory obligations." 77 FR 48208, 48301. The CFTC further clarified that "a person's specific consideration of regulatory burdens, including the avoidance thereof, is not dispositive that the person is acting without a legitimate business purpose in a particular case. The CFTC will view legitimate business purpose considerations on a case-by-case basis in conjunction with all other relevant facts and circumstances." *Id.*

[913] The Bureau emphasizes that although the anti-evasion clause in proposed § 1041.19 and the accompanying commentary has been informed by the CFTC Anti-Evasion Rules, the Bureau is not formally adopting as the Bureau's own the interpretations drawn by the CFTC in the CFTC Anti-Evasion Rules' preamble, nor is the Bureau endorsing the reasoning and citations provided by the CFTC in the CFTC Anti-Evasion Rules' preamble.

Proposed comment 19-2.ii provides an example that assumes the following facts: (1) A lender makes covered short-term loans with a contractual duration of 14 days and a lump-sum repayment structure; (2) the loan contracts provide for a "recurring late fee" as a lender remedy that is automatically triggered in the event of a consumer's delinquency (*i.e.,* if a consumer does not pay the entire lump-sum amount on the contractual due date, with no grace period); (3) the recurring late fee is to be paid biweekly while the loan remains outstanding; (4) the amount of the recurring late fee is equivalent to the fee that the lender charges on transactions that are considered rollovers under applicable State law; (5) for consumers who are delinquent, the lender takes no other steps to collect on the loan other than charging the recurring late fees for 90 days; and (6) the lender gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the recurring late fee.

The Bureau believes that this type of loan contract structure in conjunction with the other facts and circumstances presented in proposed comment 19-2.ii would indicate that the lender may have taken the action with the intent of evading the requirements of the proposed rule. This loan contract structure effectively would recreate a loan sequence of covered short-term loans with a corresponding rollover fee-based revenue stream for the lender, even though nominally the contract duration would be for only 14 days and the recurring fees would be characterized as late fees attributable to the first loan. If the loan was made pursuant to proposed § 1041.5 (*i.e.,* the ability-to-repay requirements), the lender's action would result in avoidance of the requirements of proposed § 1041.6, which would impose a presumption of unaffordability for the second or third covered short-term loan in a sequence of loans made under proposed § 1041.5 and a prohibition on making another covered short-term loan for 30 days following the third covered short-term loan in such a sequence. Likewise, if the loan was made pursuant to proposed § 1041.7 (*i.e.,* the conditional exemption for Section 7 loans), the lender's action would result in avoidance of the principal reduction requirements, the three-loan cap on sequences of Section 7 loans, and the other restrictions under proposed § 1041.7. As noted in proposed comment 19-1, the actual substance of the transaction would be what mattered, not the form, characterization, label, or structure of the transaction. Although the lender's receipt of the recurring late fee is contingent because not all consumers who take out the loans will become delinquent, in this example several facts and circumstances would make it likely that a high percentage of consumers would end up paying the recurring late fee. These include: The automatic nature of the penalty; the relatively short contractual duration (14 days); the lender's offer that non-delinquent consumers who express an inability to repay the principal by the contractual due date can instead pay the recurring late fee; and, most notably, the lender's avoidance of the ability-to-repay requirement, which makes it more likely that the loan would be unaffordable and result in a delinquency triggering the recurring late fee. Moreover, the fact that the lender did not impose any other penalties for 90 days would be relevant toward determining whether the lender's action was taken with the intent of evading the rule, rather than solely for legitimate business purposes, because it suggests that the lender was using the recurring late fee as a continuing revenue source rather than as a collection tool or compensation to the lender for expenses as a result of the late payment.

Proposed comment 19-2.iii provides an example in which a lender makes a non-covered loan to consumers without assessing their ability to repay and with the following terms: A contractual duration of 60 days, repayment through four periodic payments each due every 15 days, and a total cost of credit that is below 36 percent per annum, as measured at the time of consummation. Proposed comment 19-2.iii also includes the following facts: (1) The lender requires a leveraged payment mechanism at or prior to consummation; (2) the loan contract imposes a penalty interest rate of 360 percent per annum (*i.e.,* more than 10 times the contractual annual percentage rate) as a lender remedy that is automatically triggered in the event of the consumer's delinquency (*i.e.,* if the consumer does not make a periodic payment or repay the entire loan balance when due, with no grace period); (3) the lender did not include the penalty interest rate in its loan contracts prior to the issuance of the final rule that is codified in 12 CFR part 1041; (4) for consumers who are delinquent, the lender takes no steps to collect on the loan other than charging the penalty interest rate for 90 days; and (5) the lender gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the penalty interest rate.

The Bureau believes that this type of loan contract structure in conjunction with the other facts and circumstances presented in proposed comment 19-2.iii would indicate that the lender may have taken the action with the intent of evading the requirements of the proposed rule. The loan otherwise would be a covered longer-term loan under proposed § 1041.3(b)(2)(ii) except for the fact that the total cost of credit does not exceed 36 percent per annum. Lenders would avoid the proposed ability-to-repay and other requirements simply by changing the contractual terms to re-characterize fees that otherwise would be counted toward the cost threshold for scope coverage of longer-term loans, while many consumers would end up paying more than 10 times that cost threshold because of the penalty interest rate. As noted in proposed comment 19-1, the actual substance of the transaction would be what mattered, not the form, characterization, label, or structure of the transaction. Although the lender's receipt of the penalty interest is contingent because not all consumers who take out the loans will become delinquent, in this example several facts and circumstances would make it likely that a high percentage of consumers would end up paying the penalty interest rate. These include: The automatic nature of the penalty; the relatively short contractual duration (60 days); the lender's offer that non-delinquent consumers who express an inability to repay the principal by the contractual due date can instead pay the penalty interest rate; and, most notably, the lender's avoidance of the ability-to-repay requirement, which makes it more likely that the loan would be unaffordable and result in a delinquency triggering the penalty interest rate. The lender also did not include the penalty interest rate in its loan contracts prior to the issuance of the final rule. Therefore, these facts and circumstances would be relevant toward the determination of whether the lender's action was taken with the intent of evading the rule, rather than solely for legitimate business purposes.

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[914] For example, if the loan contract requires the consumer to pledge an article of personal property at consummation, but after the 72-hour window has passed the lender routinely offers to release the pledge in exchange for obtaining the leveraged payment mechanism or vehicle security, such lender action may raise concerns about the lender's intent to evade the requirements of the proposed rule. That is, these actions would suggest the lender is using the pledge not for security but instead as a means of strategically inducing consumers to provide a leveraged payment mechanism or vehicle title security shortly after consummation in order to avoid the scope coverage of the proposed rule and the corresponding ability-to-repay and other requirements.

The Bureau emphasizes that the preceding example as well as the examples in proposed comments 19-2.i and -2.ii are non-exhaustive and illustrative only. The Bureau believes that other types of loan contract structures, such as those containing other types of extraordinary remedies or with deferred interest rates, could raise similar facts and circumstances indicating that a lender may have taken action with the intent of evading the proposed rule.

In addition to the preceding examples of potentially evasive lender actions related to loan contract structures for covered loans, proposed comment 19-2.iv provides a non-exhaustive, illustrative example of a lender action related to payment practices that may have been taken with the intent of evading the requirements of proposed § 1041.14 and thus may be a violation of proposed § 1041.19. This proposed comment assumes the following facts: (1) A lender collects payment on its covered longer-term installment loans primarily through recurring electronic fund transfers authorized by consumers at consummation; (2) as a matter of lender policy and practice, after a first ACH payment transfer to a consumer's account for the full payment amount is returned for nonsufficient funds, the lender makes a second payment transfer to the account on the following day for $1.00; (3) if the second payment transfer succeeds, the lender immediately splits the amount of the full payment into two separate payment transfers and makes both payment transfers to the account at the same time, resulting in two returns for nonsufficient funds in the vast majority of cases; (4) the lender developed the policy and began the practice shortly prior to the effective date of the rule that is codified in 12 CFR part 1041, which, among other provisions, restricts lenders from making further attempts to withdraw payment from consumers' account after two consecutive attempts have failed, unless the lender obtains a new and specific authorization from the consumer; and (5) the lender's prior policy and practice when re-presenting the first failed payment transfer was to re-present for the payment's full amount.

The Bureau believes that re-presenting a first failed payment transfer for a very small fraction of the full payment amount would indicate that the lender may have taken the action with the intent of evading the proposed rule's restrictions on making further payment withdrawal attempts from a consumer's account after two consecutive attempts have failed. By taking this action, the lender would reset the failed payment transfer count by making a "successful" attempt for a nominal amount. The fact that the lender developed the policy and began the practice shortly before the rule's effective date would be relevant toward determining whether the lender's action was taken with the intent of evasion rather than solely for legitimate business purposes.

Proposed comment 19-3 provides an example of a lender action that is not taken with the intent of evading the requirements of the proposed rule and thus does not violate proposed § 1041.19. The proposed comment includes the following facts: (1) Prior to the effective date of the rule that is codified in 12 CFR part 1041, a lender offers a loan product to consumers with a contractual duration of 30 days (Loan Product A), and if the lender had continued to make Loan Product A to consumers following the effective date of the rule, Loan Product A would have been treated as a covered short-term loan, requiring the lender to make an ability-to-repay determination under § 1041.5; (2) as of the effective date of the rule, the lender ceases offering Loan Product A and, in its place, offers consumers an alternative loan product with a 46-day contractual duration and other terms and conditions that result in treatment as a covered longer-term loan (Loan Product B); and (3) for Loan Product B, the lender does not make an ability-to-repay determination under § 1041.9, but the lender satisfies the requirements of §§ 1041.11 or 1041.12, *i.e.*, one of the conditional exemptions for covered longer-term loans. The Bureau would not consider this lender action to have been taken with the intent of evading the requirements of the proposed rule. While it is the case that the lender changed the loan product terms from a 30-day duration to a 46-day duration and began offering the alternative loan product as of the effective date of the rule, and that the alternative loan product would not be subject to the ability-to-repay requirements for covered longer-term loans under proposed § 1041.9, these facts do not indicate that the lender took action to evade the requirements of the rule because no actual evasion has occurred. That is, the alternative loan product is a covered loan subject to the requirements of the conditional exemptions for covered longer-term loans under proposed §§ 1041.11 and 1041.12—and the example assumes that the lender is in compliance with the requirements of those sections. This example stands in contrast to the examples in proposed comments 19-2.i and -2.iii, where lenders take actions that result in avoiding coverage of the rule and, when combined with the other facts and circumstances presented in the examples, indicate the lender's intent to evade the requirements of the rule.

The Bureau solicits comment on whether it is appropriate to include proposed § 1041.19 and on the specific language of the proposed anti-evasion provision. The Bureau solicits comment on whether, in lieu of or in addition to proposed § 1041.19, the substantive requirements of the proposed rule should directly prohibit the conduct described in proposed comments 19-2.i to 19-2.iv or additional types of lender actions that may have been taken with the intent of evading the requirements of the proposed rule and, if so, the specific types of conduct that should be proscribed. For example, the Bureau solicits comment on: (1) Whether the Bureau should prohibit lenders from offering incentives to obtain leveraged payment mechanism or vehicle security after the proceeds of a covered loan have been fully received by the consumer; (2) whether the Bureau should modify the definition of loan sequence to address the example in proposed comment 19-2.ii; (3) whether the Bureau should modify the definition of covered longer-term loan to address the example in proposed comment 19-2.iii and whether there are circumstances when this type of penalty interest rate structure is not an evasion;

and (4) whether the Bureau should restrict the ability of lenders to initiate smaller or multiple payment transfers after a failed payment transfer attempt. Additionally, the Bureau solicits comment on whether to include the specific proposed commentary examples, whether additional types of lender actions that may have been taken with the intent of evasion should be addressed in the commentary with examples and, if so, what specific types of lender actions should be addressed. The Bureau also solicits comment on whether the Bureau should include additional examples in the commentary of lender actions that are *not* taken with the intent of evading the requirements of the rule and, if so, what specific types of lender actions should be addressed. Additionally, the Bureau solicits comment on whether proposed § 1041.19 and related commentary should provide additional clarification on the facts and circumstances that would be relevant to a determination that a lender's action was taken with the intent of evading the proposed rule and on what types of lender actions are taken solely for legitimate business purposes and thus not would constitute evasion.

Section 1041.20 Severability

Proposed § 1041.20 provides that the provisions of this rule are separate and severable from one another and that it is the intention of the Bureau that the remaining provisions shall continue in effect if any provision is stayed or determined to be invalid.

Proposed Effective Date

The Bureau is proposing that, in general, the final rule would take effect 15 months after publication in the **Federal Register**. The Bureau believes that 15 months appears to strike the appropriate balance between providing consumers with necessary protections while giving covered persons adequate time to comply with all aspects of the final rule. In particular, the Bureau has given thought to the time necessary to implement the consumer reporting components of the proposal, in addition to the time that lender would need to adjust their underwriting practices and prepare to provide new consumer disclosures. As is discussed in the section-by-section analysis of proposed §§ 1041.16 and 1041.17 above, the Bureau is proposing that § 1041.17 would take effect 60 days after publication in the **Federal Register** with regard to registered information systems. The Bureau believes that this earlier effective date for § 1041.17 may be appropriate to allow the standards and process for registration to be in place, which would be necessary for the information systems to be operational by the effective date of the other provisions of the final rule. The Bureau is also seeking comment on two general approaches on the effective date for the requirement to furnish loan information to registered and provisionally registered information systems to facilitate an orderly implementation process. The Bureau seeks comment on all aspects of the Bureau's approach to the effective date of the final rule, whether it should be simplified and whether the proposed time periods are appropriate, should be lengthened, or should be shortened.

VI. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing this proposed rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons (which in this case would be the providers subject to the proposed rule), including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposed rule. In developing the proposed rule, the Bureau has consulted with the prudential regulators and the FTC regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

In considering the potential benefits, costs, and impacts of the proposal, the Bureau takes as the baseline for the analysis the regulatory regime that currently exists for the covered products and covered persons.[915] These include State and local laws and regulations; Federal laws, such as the MLA, FCRA, the Fair Debt Collection Practices Act (FDCPA), TILA, EFTA, and the regulations promulgated under those laws; and, with regard to depository institutions that make covered loans, the guidance and policy statements of those institutions' prudential regulators.[916]

The proposal includes several conditional exemptions that have the effect of creating alternative methods of compliance, and in places it is useful to discuss their costs, benefits, and impacts relative to those of the core provisions of the proposed regulation to which they are an alternative. The baseline for evaluating the potential full benefits, costs, and impacts of the proposal, however, is the current regulatory regime as of the issuance of the proposal.

The timeframe for the consideration of benefits and costs includes the initial transitional period during which lenders would develop the capacity to comply with the proposed regulation and the market would adjust to the new requirements and limitations of the proposal, as well as the steady-state that would be reached once those adjustments had occurred. The Bureau believes these adjustments would take place within three to five years of finalization of the proposed rule. The marketplace for covered loans and similar products would likely continue to evolve beyond that date, but such long-term changes are beyond the scope of this analysis.

B. Need for the Regulation

As discussed in Market Concerns—Short-Term Loans, Market Concerns—Longer-Term Loans, and Market Concerns—Payments above, the Bureau is concerned that practices in the markets for payday, vehicle title, and payday installment loans pose significant risk of harm to consumers. In particular, the Bureau is concerned about the harmful impacts on consumers of the practice of making these loans without making a reasonable determination that the consumer can afford to repay the loan while paying for other major financial obligations and basic living expenses. These include harms from delinquency and default, including bank and lender fees and aggressive collections efforts, and harms from making unaffordable payments. They also include extended sequences of short-term loans, which lead to very high costs of borrowing that the Bureau believes are, in many cases, not anticipated by consumers. And, in the case of vehicle title loans, many borrowers are harmed by the repossession of their vehicle.

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[915] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

[916] *See, e.g.*, FDIC Financial Institution Letter, *Payday Lending Programs*, March 1, 2005, *https://www.fdic.gov/news/news/financial/2005/fil1405.pdf*; OCC, *Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Product*, 78 FR 70624 (Nov. 26, 2013); FDIC, *Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products*, 78 FR 70552 (Nov. 26, 2013).

In addition, the Bureau is concerned that lenders in this market are using their ability to initiate payment withdrawals from consumers' accounts in ways that cause substantial injury to consumers, including increased fees and risk of account closure.

C. Provisions to be Considered

The discussion below considers the benefits, costs, and impacts of the following major proposed provisions:

1. Provisions Relating Specifically to Covered Short-Term Loans:
   a. Requirement to determine borrowers' ability to repay, including the requirement to obtain a consumer report from a registered information system and furnish loan information to registered information systems;
   b. Limitations on making loans to borrowers with recent covered loans; and
   c. Alternative to the requirement to determine borrowers' ability to repay, including notices to consumers taking out loans originated under this alternative;
2. Provisions Relating Specifically to Covered Longer-Term Loans:
   a. Requirement to determine borrowers' ability to repay, including the requirement to obtain a consumer report from a registered information system and furnish loan information to registered information systems;
   b. Limitations on making loans to borrowers with recent covered loans; and
   c. Alternatives to the requirement to determine borrowers' ability to repay;
3. Provisions Relating to Payment Practices:
   a. Limitations on continuing to attempt to withdraw money from a borrower's account after two consecutive failed attempts; and
   b. Payment notice requirements;
4. Recordkeeping requirements; and
5. Requirements for registered information systems.

The discussions of impacts are organized into the five main categories of provisions listed above; those relating to covered short-term loans, those relating to covered longer-term loans, those relating to limitations of payment practices, recordkeeping requirements, and requirements for registered information systems. Within each of these main categories, the discussion is organized to facilitate a clear and complete consideration of the benefits, costs, and impacts of the major provisions of the proposed rule. Impacts on depository institutions with $10 billion or less in total assets and on rural consumers are discussed separately below.

D. Coverage of the Proposal

1. Provisions Relating to Covered Short-Term Loans

The provision relating to covered short-term loans would apply to lenders who make those loans. The definition of a covered short-term loan is provided in proposed § 1041.3(b)(1).

The Bureau believes that these provisions would primarily affect storefront and online payday lenders and storefront vehicle title lenders. Some Federal credit unions, however, make loans under the NCUA PAL program with a term of 45 days or less; similarly, some community banks may make "accommodation loans" with a term of 45 days or less, and these institutions would also be affected. In addition, there is a least one bank that makes deposit advance product loans that would likely be covered by these provisions.

2. Provisions Relating to Covered Longer-Term Loans

The provisions relating to covered longer term loans would apply to lenders who make those loans. The definition of a covered longer term loan is provided in proposed § 1041.3(b)(2).

The Bureau believes that these provisions would primarily affect vehicle title lenders, online lenders making high-cost loans, and storefront payday lenders who have entered the payday installment loan market. The provisions may also cover a portion of the loans made by consumer finance companies when those lenders obtain authorizations for direct repayment from a borrower's account or vehicle security. In addition, some loans made by community banks or credit unions that are secured by a borrower's vehicle or repaid from the consumer's deposit account may be covered. This would most likely occur if the loan is relatively small and has an origination fee that causes the total cost of credit of the loan to be greater than 36 percent. Finally, many of the PAL loans made by Federal credit unions would be covered because those loans often have an origination application fee that causes the total cost of credit to be above 36 percent, and the loans are often repaid directly from the borrowers' deposit accounts at the credit unions.[917]

3. Provisions Relating to Payment Practices, and Related Notices

The provisions relating to payment practices and related notices would apply to any lender making a covered loan, either short-term or longer-term, for which the lender has obtained authorization to withdraw payment directly from a borrower's deposit account or prepaid account. These provisions would affect online lenders, who normally receive payments via ACH. In addition, storefront payday or payday installment lenders that receive payment via ACH or post-dated check, either for regular payments or when a borrower has failed to come to the store and make a cash payment in person, would be affected. Lenders making vehicle title loans often do not obtain an ACH authorization or post-dated check, but those that do would be affected. Lenders making loans under one of the alternatives to the ATR requirements for covered longer-term loans would not be required to provide the payment notices, but would be affected to the extent they reach the limit on the number of attempts to withdraw payment from a borrower's account.

4. Recordkeeping Requirements

The provisions relating to recordkeeping requirements would apply to any lender making covered loans.

5. Registered Information System Requirements

The provisions relating to applying to become a registered information system would apply to any firm that applied. The provisions relating to the requirements to operate as a registered information system would apply to any firm that became a registered information system.

E. Data Limitations and Quantification of Benefits, Costs and Impacts

The analysis presented below relies on data that the Bureau has obtained from industry, other regulatory agencies, and publically available sources, including the findings of other researchers. General economic principles and the Bureau's expertise in consumer financial markets, together with the data and findings that are available, provide insight into the potential benefits, costs, and impacts of the proposed regulation. Where possible, the Bureau has made quantitative estimates based on these principles and the data available. Some benefits and costs, however, are not amenable to quantification, or are not quantifiable given the data available to the Bureau; a qualitative discussion of those benefits, costs, and impacts is provided.

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[917] For additional information on all of these products and lenders see part II.

The Bureau solicits comments on all aspects of the quantitative estimates provided below, as well as comments on the qualitative discussion where quantitative estimates are not provided. The Bureau also solicits data and analysis that would supplement the quantitative analysis discussed below or provide quantitative estimates of benefits, costs, or impacts for which there are currently only qualitative discussions.

F. Potential Benefits and Costs of the Proposed Rule to Consumers and Covered Persons—Provisions Relating Specifically to Covered Short-Term Loans

This section discusses the impacts of the provisions of the proposal that specifically relate to covered short-term loans. The benefits and costs of these provisions may be affected by other provisions of the proposed rule. For example, the potential for consumer substitution across different categories of covered products means that provisions relating to covered longer-term loans, to the extent they affect the cost or availability of those loans, may have implications for the effects of the provisions relating to covered short-term loans. Potential interactions are discussed as appropriate.

The provisions discussed in this part VI.F include the proposed requirements under §§ 1041.5 and 1041.6 that lenders determine that applicants for these covered loans have the ability to repay the loan while still meeting their major financial obligations and paying for basic living expenses, as well as the alternative set of requirements for originating short-term loans proposed in § 1041.7. In this part VI, the practice of making loans after determining that the borrower has the ability to repay the loan will be referred to as the "ATR approach," while the practice of making loans by complying with the alternative requirements under proposed § 1041.7 will be referred to as the "Alternative approach."

The proposed procedural requirements for originations, and the associated restrictions on reborrowing, are likely to have a substantial impact on the markets for these products. In order to present a clear analysis of the benefits and costs of the proposal, this section first describes the benefits and costs of the proposal to covered persons and then discusses the implications of the proposal for the overall markets for these products. The benefits and costs to consumers are then described.

1. Benefits and Costs to Covered Persons

The proposed rule would impose a number of procedural requirements on lenders making covered short-term loans, as well as impose restrictions on the number of covered short-term loans that could be made. This section first discusses the benefits and costs of the procedural requirements for lenders using the ATR approach with regard to originating loans and furnishing certain related information to registered information systems over the life of the loan, then discusses the benefits and costs of the procedural requirements for lenders using the Alternative approach. The final section discusses the potential impacts on loan volume and revenues of the underwriting and reborrowing restrictions under both the ATR and the Alternative approach.

Most if not all of the proposed provisions concern activities that lenders could choose to engage in absent the proposal. The benefits to lenders of those provisions are discussed here, but to the extent that lenders do not voluntarily choose to engage in the activities, it is likely the case that the benefits, in the lenders' view, do not currently outweigh the costs.

(a). Procedural Requirements—ATR Approach

Lenders making loans using the ATR approach would need to comply with several procedural requirements when originating loans. Lenders would need to consult their own records and the records of their affiliates to determine whether the borrower had taken out any prior covered loans, or non-covered bridge loans, that were still outstanding or were repaid within the prior 30 days. Lenders would have to obtain a consumer report from a registered information system, if available, to obtain information about the consumer's borrowing history across lenders, and would be required to furnish information regarding covered loans they originate to registered information systems. Lenders would also be required to obtain information and verification evidence about the amount and timing of an applicant's income and major financial obligations, obtain a statement from applicants of their income and payments on major financial obligations, and assess that information, along with an estimate of the borrower's basic living expenses, to determine whether a consumer has the ability to repay the loan.

In addition, before making a covered short-term loan to a consumer during the term of and for 30 days following the consumer having a covered short-term loan outstanding, a lender would need to determine that the borrower's financial capacity had sufficiently improved since obtaining the prior loan. Documenting the improved capacity would impose procedural costs on lenders in some circumstances.

Each of the procedural requirements entails costs that would potentially be incurred for each loan application, and not just for loans that were originated. Lenders would likely avoid incurring the full set of costs for each application by establishing procedures to reject applicants who fail a screen based on a review of partial information. For example, lenders are unlikely to collect any further information if their records show that a borrower is ineligible for a loan given the borrower's prior borrowing history. The Bureau expects that lenders would organize their underwriting process so that the more costly steps of the process are only taken for borrowers who satisfy other requirements. Many lenders currently use other screens when making loans, such as screens meant to identify potentially fraudulent applications. If lenders employ these screens prior to collecting all of the required information from borrowers, that would eliminate the cost of collecting additional information on borrowers who fail those screens. But in most cases lenders would incur some of these costs evaluating loan applications that do not result in an originated loan and in some cases lenders would incur all of these costs in evaluating loan applications that are eventually declined.

Finally, lenders would be required to develop procedures to comply with each of these requirements and train their staff in those procedures.

The Bureau believes that many lenders use automated systems when underwriting loans and would modify those systems, or purchase upgrades to those systems, to incorporate many of the procedural requirements of the ATR approach. The costs of modifying such a system or purchasing an upgrade are discussed below, in the discussion of the costs of developing procedures, upgrading systems, and training staff.

Consulting Lender's Own Records

In order to consult its own records and those of any affiliates, a lender would need a system for recording loans that can be identified as being made to a particular consumer and a method of reliably accessing those records. The Bureau believes that lenders would most likely comply with this requirement by using computerized recordkeeping. A lender operating a single storefront would need a system of recording the loans made from that storefront and accessing those loans by consumer. A lender operating multiple storefronts or multiple affiliates would need a centralized set of records or a way of accessing the records of all of the storefronts or affiliates. A lender operating solely online would presumably maintain a single set of records; if it maintained multiple sets of records it would need a way to access each set of records.

The Bureau believes that most lenders already have the ability to comply with this provision, with the possible exception of lenders with affiliates that are run as separate operations, as lenders' own business needs likely lead them to have this capacity. Lenders need to be able to track loans in order to service the loans. In addition, lenders need to track the borrowing and repayment behavior of individual consumers to reduce their credit risk, such as by avoiding lending to a consumer who has defaulted on a prior loan. And most States that allow payday lending (at least 23) have requirements that implicitly require lenders to have the ability to check their records for prior loans to a loan applicant, including limitations on renewals or rollovers or cooling-off periods between loans. Despite these various considerations, however, there may be some lenders that currently do not have the capacity to comply with this requirement.

Developing this capacity would enable these lenders to better service the loans they originate and to better manage their lending risk, such as by tracking the loan performance of their borrowers. Lenders that do not already have a records system in place would need to incur a one-time cost of developing such a system, which may require investment in information technology hardware and/or software. The Bureau estimates that purchasing necessary hardware and software would cost approximately $2,000, plus $1,000 for each additional storefront. The Bureau estimates that firms that already have standard personal computer hardware, but no electronic record keeping system, would need to incur a cost of approximately $500 per storefront. Lenders may instead contract with a vendor to supply part or all of the systems and training needs.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically access the lender's own records. For lenders that access their records manually, rather than through an automated loan origination system, the Bureau estimates that doing so would take three minutes of an employee's time.

Accessing a Registered Information System

The Bureau believes that many lenders already work with firms that provide some of the information that would be included in the registered information system data, such as in States where a private third-party operates reporting systems on behalf of the State regulator, or for their own risk management purposes, such as fraud detection. However, the Bureau recognizes that there also is a sizable segment of lenders making covered short-term loans who operate only in States without a state-mandated reporting system and who make lending decisions without obtaining any data from a consumer reporting agency.

Lenders would benefit from being able to obtain from a registered information system in real time, or close to real time, reasonably comprehensive information with respect to an applicant's current outstanding covered loans and borrowing history with respect to such loans, including information from which the lender can identify prior defaults. Lenders that do not currently obtain consumer reports from specialty consumer reporting systems would benefit from doing so through reduced fraud risk and reduced default risk. And, because the proposed rule would require much broader reporting of covered loans by imposing a furnishing obligation on all lenders with respect to all covered loans (except for covered longer-term loans made pursuant to one of the conditional exemptions and reported to a national consumer reporting agency), even lenders that already receive reports from specialty consumer reporting agencies would benefit from the requirement to access a registered information system, because the systems would have greater coverage of the market for covered loans.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically order a report from a registered information system during the lending process. For lenders that order reports manually, the Bureau estimates that it would take approximately three minutes for a lender to request a report from a registered information system. For all lenders, the Bureau expects that access to a registered information system would be priced on a "per-hit" basis, in which a hit is a report successfully returned in response to a request for information about a particular consumer at a particular point in time. The Bureau estimates that the cost per hit would be $0.50, based on pricing in existing specialty consumer reporting markets.

Furnishing Information to Registered Information Systems

Lenders making covered short-term loans would be required to furnish information about those loans to all information systems that have been registered with the Bureau for 120 days or more, have been provisionally registered with the Bureau for 120 days or more, or have subsequently become registered after being provisionally registered (generally referred to here as registered information systems). At loan consummation, the information furnished would need to include identifying information about the borrower, the type of loan, the loan consummation date, the principal amount borrowed or credit limit (for certain loans), and the payment due dates and amounts. While a loan is outstanding, lenders would need to furnish information about any update to information previously furnished pursuant to the rule within a reasonable period of time following the event prompting the update. And when a loan ceases to be an outstanding loan, lenders would need to furnish the date as of which the loan ceased to be outstanding, and, for certain loans that have been paid in full, the amount paid on the loan.

Furnishing data to registered information systems would benefit all lenders by improving the quality of information available to lenders. This would allow lenders to better identify borrowers who pose relatively high default risk, and the richer information and more complete market coverage would make fraud detection more effective.

Furnishing information to registered information systems would require lenders to incur one-time and ongoing costs. One-time costs include those associated with establishing a relationship with each registered information system, and developing procedures for furnishing the loan data and procedures for compliance with applicable laws. Lenders using automated loan origination systems would likely modify those systems, or purchase upgrades to those systems, to incorporate the ability to furnish the required information to registered information systems.[918] The costs of these systems are discussed below, in the discussion of developing procedures, upgrading systems, and training staff.

The ongoing costs would be the costs of actually furnishing the data. Lenders with automated loan origination and servicing systems with the capacity of furnishing the required data would have very low ongoing costs. Lenders that report information manually would likely do so through a web-based form, which the Bureau estimates would take five to 10 minutes to fill out for each loan at the time of consummation, when information is updated (as applicable), and when the loan ceases to be an outstanding loan. Assuming that multiple registered information systems existed, it might be necessary to incur this cost multiple times, if data are not shared across the systems. The Bureau notes that some lenders in States where a private third party operates reporting systems on behalf of State regulators are already required to provide similar information, albeit to a single reporting entity, and so have experience complying with this type of requirement. The Bureau would also encourage the development of common data standards for registered information systems when possible to reduce the costs of providing data to multiple services.

Obtaining Information and Verification Evidence About Income and Major Financial Obligations

Lenders making loans under the ATR approach would be required to collect information and verification evidence about the amount and timing of income and major financial obligations, obtain a statement from applicants about their income and payments on major financial obligations, and use that information to make an ability-to-repay determination. There are two types of costs entailed in making an ATR determination: The cost of obtaining the verification evidence and the cost of making an ATR assessment consistent with that evidence, which is discussed in the subsequent section. The impact on lenders with respect to applicants who a lender determines do not have the ability to repay, and are thus denied loans, is discussed separately.

The Bureau believes that many lenders that make covered short-term loans, such as storefront lenders making payday loans, already obtain some information on consumers' income. Many of these lenders, however, only obtain income verification evidence the first time they make a loan to a consumer, or for the first loan following a substantial break in borrowing. Other lenders, such as some vehicle title lenders or some lenders operating online, may not currently obtain income information at all, let alone income verification evidence, on any loans. In addition, many consumers likely have multiple income sources that are not all currently documented in the ordinary course of short-term lending. Under the proposal, consumers and lenders might have incentives to provide and gather more income information than they do currently in order to establish the borrower's ability to repay a given loan. The Bureau believes that most lenders that originate covered short-term loans do not currently collect information on applicants' major financial obligations, let alone verification evidence of such obligations, or determine consumers' ability to repay a loan, as would be required under the proposed rule.

As noted above, many lenders already use automated systems when originating loans. These lenders would likely modify those systems or purchase upgrades to those systems to automate many of the tasks that would be required by the proposal.

Lenders would be required to obtain a consumer report from a national consumer reporting agency to verify applicants' required payments under debt obligations. This would be in addition to the cost of obtaining a consumer report from a registered information system. Verification evidence for housing costs may be included on an applicant's consumer report, if the applicant has a mortgage; otherwise, verification costs could consist of obtaining documentation of actual rent or estimating a consumer's housing expense based on the housing expenses of similarly situated consumers with households in their area. The Bureau believes that most lenders would purchase reports from specialty consumer reporting agencies that would contain both debt information from a national consumer reporting agency and housing expense estimates. Based on industry outreach, the Bureau believes these reports would cost approximately $2.00 for small lenders and $0.55 for larger lenders. As with the ordering of reports from registered information systems, the Bureau believes that many lenders would modify their loan origination system, or purchase an upgrade to that system, to allow the system to automatically order a specialty consumer report during the lending process at a stage in the process when the information is relevant. For lenders that order reports manually, the Bureau estimates that it would take approximately two minutes for a lender to request a report.

Lenders that do not currently collect income information or verification evidence for income would need to do so. For lenders that use a manual process, for consumers who have straightforward documentation of income and provide documentation for housing expenses, rather than relying on housing cost estimates, the Bureau estimates that gathering and reviewing information and verification evidence for income and major expenses, and having a consumer list income and major financial obligations, would take roughly three to five minutes per application.

Some consumers may visit a lender's storefront without the required income documentation and may have income for which verification evidence cannot be obtained electronically, raising lenders' costs and potentially leading to some consumers failing to complete the loan application process, reducing lender revenue.

Lenders making loans online may face particular challenges obtaining verification evidence, especially for income. It may be feasible for online lenders to obtain scanned or photographed documents as attachments to an electronic submission; the Bureau understands that some online lenders are doing this today with success. And services that use other sources of information, such as checking account or payroll records, may mitigate the need for lenders to obtain verification evidence directly from consumers.

Making Ability-to-Repay Determination

Once information and verification evidence on income and major financial obligations has been obtained, the lender would need to make a reasonable determination whether the consumer has the ability to repay the contemplated loan. In addition to considering the information collected about income and major financial obligations, lenders would need to estimate an amount that borrowers generally need for basic living expenses. They may do this in a number of ways, including, for example, collecting information directly from borrowers, using available estimates published by third parties, or providing for a "cushion" calculated as a percentage of income.

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[918] Some software vendors that serve lenders that make payday and other loans have developed enhancements to enable these lenders to report loan information automatically to existing State reporting systems.

The initial costs of developing methods and procedures for gathering information about major financial obligations and income and estimating basic living expenses are discussed further below. As noted above, the Bureau believes that many lenders use automated loan origination systems, and would modify these systems or purchase upgrade these systems to make the ability-to-repay calculations. On an ongoing basis, the Bureau estimates that this would take roughly 10 additional minutes for lenders that use a manual process to make the ability-to-repay calculations.

Total Procedural Costs of the ATR Approach

In total, the Bureau estimates that obtaining a statement from the consumer and verification evidence about consumers' income and required payments for major financial obligations, projecting the consumer's residual income, estimating the consumer's basic living expenses, and arriving at a reasonable ATR determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system, with total costs dependent on the existing utilization rates of and wages paid to staff that would spend time carrying out this work. Dollar costs would include a report from a registered information system costing $0.50 and a specialty consumer report containing housing costs estimates costing between $0.55 and $2.00, depending on lender size; lenders relying on electronic services to gather verification information about income would face an additional small cost.

Documenting Improved Financial Capacity

Because of the impact of the presumption of unaffordability for a new covered short-term loan during the term of and for 30 days following a prior covered short-term originated using the ATR approach, lenders would not be able to make another similar covered short-term loan to a borrower within 30 days of the prior loan, unless the borrower's financial capacity had sufficiently improved since obtaining the prior loan.[919] This improvement in the borrower's circumstances would need to be documented using the same general kinds of verification evidence that lenders would need to make an initial loan. This requirement would benefit lenders if it leads to fewer borrowers defaulting on loans that they do not have the ability to repay.

When making a loan using the ATR approach, a lender would need to project the borrower's residual income, and therefore that aspect of this requirement would impose no additional cost on the lender. Comparing the borrower's projected financial capacity for the new loan with the consumer's financial capacity since obtaining the prior loan would impose very little cost, as long as the same lender had made the prior loan. The lender would need to collect additional documentation to overcome the presumption of unaffordability if the lender did not make the prior loan or if the borrower's financial capacity would be better for the new loan because of the borrower's unanticipated dip in income since obtaining the prior loan that is not likely to be repeated.

Developing Procedures, Upgrading Systems, and Training Staff

Lenders would need to develop procedures to comply with the requirements of the ATR approach and train their staff in those procedures. Many of these requirements would not appear qualitatively different from many practices that most lenders already engage in, such as gathering information and documents from borrowers and ordering various types of consumer reports.

Developing procedures to make a reasonable determination that a borrower has an ability to repay a loan without reborrowing and while paying for major financial obligations and living expenses is likely to be a challenge for many lenders. The Bureau expects that vendors, law firms, and trade associations are likely to offer both products and guidance to lenders, lowering the cost of developing procedures. Lenders would also need to develop a process for estimating borrowers' basic living expenses. Some lenders may rely on vendors that provide services to determine ability to repay that include estimate of basic living expenses. For a lender to conduct an independent analysis to determine reliable statistical estimate of basic living expenses would be quite costly. There are a number of online services, however, that provide living expense estimates that lenders may be able to use to obtain estimates or to confirm the reasonableness of information provided by loan applicants.

As noted above, the Bureau believes that many lenders use automated systems when originating loans and would incorporate many of the procedural requirements of the ATR approach into those systems. This would likely include an automated system to make the ability-to-repay determination; subtracting the component expense elements from income itself is quite straightforward and would not require substantial development costs. The Bureau believes that large lenders rely on proprietary loan origination systems, and estimates the one-time programming cost for large respondents to update their systems to carry out the various functions to be 1,000 hours per entity.[920] The Bureau believes small lenders that use automated loan origination systems rely on licensed software. Depending on the nature of the software license agreement, the Bureau estimates that the one-time cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per "seat" (or user) for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on the entity-level licenses.

The Bureau estimates that lender personnel engaging in making loans would require approximately five hours of initial training in carrying out the tasks described in this section and 2.5 hours of periodic ongoing training per year.

(b). Procedural Requirements—Alternative Approach

The procedural requirements of the Alternative approach would generally have less impact on lenders than the requirements of the ATR approach. Specifically, the rule would not mandate that lenders obtain information or verification evidence about income or major financial obligations, estimate basic living expenses, complete an ability-to-repay determination, or document improved capacity prior to making loans that meet the requirements of the Alternative approach.[921]

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[919] The presumption would not apply in certain circumstances where the consumer has made substantial payments on the prior loan, as discussed in connection with § 1041.6.

[920] In the Paperwork Reduction Act (PRA) analysis prepared by the Bureau, the burden hours estimated to modify loan origination systems is 500. This is because only part of the systems modifications are for functions related to information collections covered by the PRA. *See* Bureau of Consumer Fin. Prot., Paperwork Reduction Act Information Collection Request, Supporting Statement Part A, Payday, Vehicle Title and Installment Loans (12 CFR part 1041).

[921] As discussed above, the Bureau believes that lenders might choose to strengthen their internal processes and procedures in order to increase the odds that they would be paid in full over a

The proposed rule would instead require only that lenders making loans under § 1041.7 consult their internal records and those of affiliates, obtain reports from a registered information system, furnish information to registered information systems, and make an assessment as part of the origination process that certain loan requirements (such as principal limitations and restrictions on certain reborrowing activity) were met. The requirement to consult the lender's own records would be slightly different than under the ATR approach, as the lender would need to check the records for the prior 12 months. This would be unlikely to have different impacts on the lenders, however, as any system that allows the lender to comply with the own-record checking requirements of the ATR approach should be sufficient for the Alternative approach, and vice-versa. A lender would also have to develop procedures and train staff.

Disclosure Requirement

Lenders making covered short-term loans under the Alternative approach would be required to provide borrowers with disclosures, described in the section-by-section analysis of proposed § 1041.7(e), containing information about their loans and about the restrictions on future loans taken out using the Alternative approach. One disclosure would be required at the time of origination of a first Alternative approach loan, when a borrower had not had an Alternative approach loan within the prior 30 days. The other disclosure would be required when originating a third Alternative approach loan in a sequence, because the borrower would therefore be unable to take out another Alternative approach loan for at least 30 days after repaying the loan being originated. The disclosures would need to be customized to reflect the specifics of the individual loan.

By informing borrowers that they would likely be unable to take out another covered loan for the full amount of their current loan within 30 days of repaying the current loan, the disclosure may help lenders reduce defaults by borrowers who are unable to repay the loan, even in part, without reborrowing. Lenders may have incentives to inform borrowers of this restriction to reduce their own risk, although it is unclear if they would choose to do so absent the proposed requirement if they believed that the restrictions on principal and reborrowing were likely to discourage many borrowers who could repay from taking out loans made under the Alternative approach.

The Bureau believes that all lenders have some disclosure system in place to comply with existing disclosure requirements. Lenders may enter data directly into the disclosure system, or the system may automatically collect data from the lenders' loan origination system. For disclosures provided via mail, email, or text message, some disclosure systems forward the information necessary to prepare the disclosures to a vendor, in electronic form, and the vendor then prepares and delivers the disclosures. For disclosures provided in person, disclosure systems produce a disclosure, which the lender then provides to the borrower. Respondents would incur a one-time cost to upgrade their disclosure systems to comply with new disclosure requirements.

The Bureau believes that large lenders rely on proprietary disclosure systems, and estimates the one-time programming cost for large respondents to update these systems to be 1,000 hours per lender. The Bureau believes small depositories and non-depositories rely on licensed disclosure system software. Depending on the nature of the software license agreement, the Bureau estimates that the cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on entity-level licenses.

In addition to the upgrades to the disclosure systems, the Bureau estimates that small storefront lenders would pay $200 to a vendor for a standard electronic origination disclosure form template.

The Bureau estimates that providing disclosures in stores would take a store employee two minutes and cost $.10.

(c). Effect on Loan Volumes and Revenue From Underwriting Requirements and Restrictions on Certain Reborrowing

The underwriting requirements under the ATR approach and the restrictions on certain reborrowing under both the ATR approach and Alternative approach would impact lenders' loan volume in a way that the Bureau believes would likely be more substantial to their operations than the cost of implementing the procedural requirements discussed above. The following section discusses these impacts by industry, since storefront and online payday lenders would have the option of using both the ATR approach and Alternative approach, while vehicle title lenders would be required to use only the ATR approach. The subsequent section discusses overall combined impacts on these markets from the reduction in lender revenue and the increased procedural costs.

One of the challenges with anticipating the effects of the proposed lending restrictions is that the effects would depend in part on how borrowers would behave if their loan sequences were cut off by the restrictions. Currently, it is common for borrowers to take out loan sequences that are longer than would be permitted under the proposal. If borrowers who currently take out these long sequences would respond to the sequences being cut short by returning to borrow again as soon as they can, the impact of the reborrowing restrictions on total loan volume would be less. On the other hand, if borrowers do not return to reborrow once they are out of a sequence of loans, the restrictions would have a larger impact. To the extent that long sequences reflect the difficulty that borrowers having paying off large single-payment loans, rather than borrowers repeatedly experiencing new income or expense shocks that lead to additional borrowing, it would be more likely that borrower would tend not to return to borrow once a loan sequence has ended.

Storefront Payday Lending

The Bureau believes that storefront payday lenders would make loans primarily using the Alternative approach. The Alternative approach would have lower procedural costs. It would also allow a greater number of initial loans and, depending on the specifics of how borrowers' behavior changes in response to the proposed restrictions, would potentially allow more reborrowing. The combined impacts on which loans could be made would likely produce greater lender revenue than the ATR approach. If lenders do primarily make loans using the Alternative approach, however, they might use the ATR approach to make loans to some borrowers who had reached the annual limits on borrowing under the Alternative approach and could demonstrate an ability to repay a new payday loan.

For a borrower who has not previously taken out a covered short-term loan, the Alternative approach

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sequence of three Alternative approach loans, since the proposed rule would restrict further reborrowing as discussed in more detail below.

would allow a lender to make a payday loan without conducting an ability-to-repay analysis under §§ 1041.5 and 1041.6. The major restriction on that loan, relative to a payday loan made under the ATR approach, would be that the loan size could not exceed $500. There would also be restrictions on the size of subsequent loans taken out within 30 days of a prior loan. The second loan could not be larger than two-thirds the size of the first loan, and the third loan could not be greater than one-third the size of the first loan. A fourth loan would not be permitted for at least 30 days after repaying a third loan. Lenders would not be permitted to make a covered short-term loan under the ATR approach to a consumer during the term of and for 30 days following the consumer having a covered short-term loan under the Alternative approach outstanding. There is also a limitation that a borrower could not take out a loan made under the Alternative approach if the loan would cause the borrower to have more than six covered short-term loans in a year or be in debt on covered short-term loans for more than 90 days in a year.

The Bureau has simulated the impacts of the lending restrictions of the Alternative approach, assuming that lenders only make loans using the Alternative approach, relative to lending volumes today. The simulations measure the direct effect of the restrictions by starting with data on actual lending and then eliminating those loans that would not have been permitted if the proposed regulation had been in effect.[922] Possible responses by lenders or borrowers are not considered in the simulations, aside from the effect discussed above on borrowers who have loan sequences interrupted by the reborrowing restrictions. Depending on the extent to which borrowers who have loan sequences cut off by the three-loan limit would return to borrow again after the 30-day period following the third loan, the estimated impact of the lending restrictions on loan volume varies from 55 to 62 percent, and the estimated impact on lender revenue varies from 71 to 76 percent.[923] The impact on revenue would be greater than the impact on loan volume because of the loan-size restrictions of the Alternative approach.

The Bureau has also simulated the effects of the reborrowing restrictions of the ATR approach. Under the ATR approach, in general, a new covered short-term loan cannot be made during the term of and for 30 days following a prior covered short-term loan unless the lender determines, based on documented information, that the consumer's financial capacity has sufficiently improved since obtaining the prior loan. The Bureau has not attempted to estimate the share of borrowers who would be able to satisfy this requirement and borrow again within 30 days of a prior covered short-term loan. Assuming that borrowers would not be able to take out a second loan within 30 days, the Bureau's simulations produce estimates of the reduction of loan volume and lender revenue of approximately 60 to 81 percent, relative to lending volume today.[924] Again, these estimates vary depending on what is assumed about the behavior of borrowers after the end of the 30-day period following a loan, during which they cannot borrow without demonstrating sufficient improvement in their financial capacity.

Estimating the share of payday loan borrowers for whom a lender could reasonably determine ability to repay the loan is very challenging. To do so would require data on borrowers' income, details about the prospective loans, especially the payments, and data on borrowers' major financial obligations and basic living expenses. In addition, lenders would be required to estimate borrowers' basic living expenses, and lenders could do this in a variety of ways, complicating estimates of the effects of the requirement.

The Bureau provides here a limited discussion of the share of borrowers who would be able to demonstrate an ability to repay a payday loan, using what data are available. These data include information on the income and loan amounts of payday borrowers. Data on major financial obligations and basic living expenses are only available at the household level, and only for certain obligations and expenses. In addition, only some of the obligation and expense data is available specifically for payday borrowers, and in no case is the obligation or expense data tied to specific loans. Given the limited information on major financial obligations and basic living expenses it is likely the case that estimates made using the available data will overstate the share of borrowers who would demonstrate an ability to repay a payday loan. In addition, lenders may adopt approaches to estimating basic living expenses that lead to fewer borrowers satisfying the lenders' ATR evaluations.

Data on payday loans and their associated individual borrower incomes were obtained under the Bureau's supervisory authority.[925] These data cover a large number of payday loans originated by several lenders in over 30 states.

Data on household expenditures comes from the 2010 BLS Consumer Expenditure Survey (CEX). These data contain information on some of the expenditures that make up major financial obligations, including housing obligations (rent or mortgage payments) and vehicle loan payments. The CEX also contains information on expenditures on utilities, food, and transportation. These expense categories would likely need to be considered by lenders estimating basic living expenses. An important limitation of the data is that they do not contain information for all major financial obligations; in particular the data exclude such obligations as credit card payments, student loan payments, and payments on other small-dollar loans.

As noted above, the CEX collects expenditure data at the household, rather than individual, level. Lenders would be required to make the ATR determination for an individual borrower, but given the lack of available information on individual expenditures, household level income and expenditures information is presented here. Because the data on payday loans collected under the Bureau's supervisory authority contains information on borrowers' individual incomes, the Bureau used a third source of data to map individual incomes to household incomes, and in particular for this population. Data on both individual and household incomes comes from the three waves of the FDIC National Survey of Unbanked and Underbanked Households that have been conducted as a special supplement to the CPS Supplement. This provides information on the distribution of household income for individuals with individual income in a certain range. The share of the population that takes one of these types of loans is fairly small, so income data on both payday and vehicle title borrowers is used to provide more robust information on the relationship between individual and household income for this population. The CPS collects information from 60,000 nationally representative respondents, of whom roughly three percent reported having taken out a payday or vehicle title loan in the past 12 months in the most recent wave of the survey.[926] These data are the most extensive source of information on both the individual and household income of such borrowers that the Bureau is aware of.

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[922] Details on the simulations of these effects are provided in CFPB Report on Supplemental Findings, at ch. 6.

[923] *CFPB Report on Supplemental Findings,* at 149.

[924] *CFPB Report on Supplemental Findings,* at 147.

[925] These data have been used in prior Bureau publications, including CFPB White Paper, CFPB Data Point, and CFPB Report on Supplemental Findings, and are discussed in more detail in those publications.

Table 1 shows the distribution of payday loan borrowers by their reported individual monthly income based on the loan data discussed above. As the table shows, roughly half of payday loans in the data were taken out by borrowers with monthly individual incomes below $2,000.

TABLE 1—DISTRIBUTION OF INDIVIDUAL MONTHLY INCOME OF PAYDAY BORROWERS

Individual monthly income	Share of borrowers (percent)
$0-$499	2.3
$500-$999	14.4
$1000-$1499	17.5
$1500-$1999	17.3
$2000-$2499	14.0
$2500-$2999	10.9
$3000-$3499	7.5
$3500-$3999	4.8
$4000-$4999	5.7
$5000-$5999	2.7
$6000-$6999	1.3
$7000-$7999	1.4

Source: CFPB analysis of loan-level payday data.

Table 2 provides the distribution of household monthly income among payday and vehicle title borrowers by their individual level of monthly income, from the CPS Supplement. For instance, referring back to Table 1, 14 percent of payday loans in the loan data analyzed by the Bureau were taken out by borrowers with individual incomes between $2,000 to $2,499 dollars per month (or $24,000 to $29,999 per year). As Table 2 shows, the median household income for a payday or vehicle title borrower with an individual monthly income in this range is approximately $2,398 per month, with the mean household income slightly higher at $2,764 per month.

TABLE 2—DISTRIBUTION OF HOUSEHOLD MONTHLY INCOME BY INDIVIDUAL MONTHLY INCOME [a]

Individual monthly income	Mean	10th Pct.	Median	90th Pct.
$0-$499	$834	$0	$390	$2,237
500-999	1,259	642	836	2,589
1000-1499	1,719	1,053	1,389	3,044
1500-1999	2,187	1,537	1,804	3,276
2000-2499	2,764	2,075	2,398	3,900
2500-2999	3,601	2,635	2,965	5,009
3000-3499	4,331	3,072	3,482	6,249
3500-3999	4,905	3,523	4,276	7,321
4000-4999	5,818	4,212	4,847	8,376
5000-5999	7,217	5,251	7,149	9,574
6000-6999	7,894	6,497	7,517	10,194
7000-7999	11,186	7,271	9,327	25,786
8000-8999	10,390	8,054	8,724	15,415
9000-9999	9,594	9,282	9,360	10,825
10,000+	14,101	11,700	13,572	18,487

Source: 2009, 2011, and 2013 FDIC National Survey of Unbanked and Underbanked Households.

[a] Reported data includes only borrowers who reported taking out a payday or vehicle title loan in the last 12 months.

Table 3 shows the distribution of household expenditures by household monthly incomes. For instance, households with an income between $2,000 and $2,499 per month spend on average $756 on recurring obligations, including rent or mortgage payments and vehicle loan payments. The same households spend an average of $763 on the basic living expenses included here, food, utilities, and transportation. That leaves $689 to cover any other major financial obligations, including payments on other forms of debt, and other basic living expenses.

TABLE 3—DISTRIBUTION OF HOUSEHOLD EXPENDITURES AND AVERAGE REMAINING INCOME BY HOUSEHOLD MONTHLY INCOME [a]

Household monthly income	Total household expenditures [a]				Recurring obligations [b]	Basic living expenses [c]	Remaining income
	Mean	10th Pct.	Median	90th Pct.	Mean	Mean	Mean
$0-$499	$1,096	$432	$982	$1,888	$555	$541	$−884
$500-$999	971	428	879	1,641	451	520	−190
$1000-$1499	1,196	595	1,094	1,958	589	607	36
$1500-$1999	1,383	732	1,280	2,156	673	710	350
$2000-$2499	1,519	888	1,450	2,281	756	763	689
$2500-$2999	1,674	1,002	1,557	2,461	870	804	1,062
$3000-$3499	1,743	1,066	1,667	2,617	901	843	1,459
$3500-$3999	1,854	1,157	1,743	2,736	975	880	1,864
$4000-$4999	2,011	1,218	1,900	2,981	1,052	959	2,436
$5000-$5999	2,186	1,342	2,087	3,152	1,189	997	3,260
$6000-$6999	2,325	1,471	2,227	3,359	1,283	1,042	4,112

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[926] FDIC (2013), "2013 FDIC National Survey of Unbanked and Underbanked Households," at 47.

TABLE 3—DISTRIBUTION OF HOUSEHOLD EXPENDITURES AND AVERAGE REMAINING INCOME BY HOUSEHOLD MONTHLY INCOME [a]—Continued

Household monthly income	Total household expenditures [a]				Recurring obligations [b]	Basic living expenses [c]	Remaining income
	Mean	10th Pct.	Median	90th Pct.	Mean	Mean	Mean
$7000-$7999	2,580	1,650	2,500	3,735	1,453	1,128	4,841
$8000-$8999	2,760	1,709	2,656	4,017	1,551	1,209	5,668
$9000-$9999	2,855	1,801	2,824	4,188	1,576	1,279	6,547
$10,000+	3,182	2,014	3,108	4,652	1,819	1,363	9,562

Source: 2010 BLS Consumer Expenditure Survey.

[a] Household expenditures include housing obligations (rent or mortgage payments), vehicle loan payments, expenditure on transportation (gas and public transit), payments on utilities, and expenditure on food.

[b] Recurring obligations include housing obligations (rent or mortgage payments) and vehicle loan payments.

[c] Basic living expenses include expenditure on transportation (gas and public transit), payments on utilities, and expenditure on food.

Based on these data, it appears that payday borrowers would need at least $1,500 in household income, monthly, to have some possibility of having sufficient residual income to be able to repay a typical payday loan of $300-$400. This would require, however, that the household have no other major financial obligations and that basic living expenses are sufficiently captured by these calculations that include only food, utilities, and transportation.

Table 4 provides additional information about the other typical major financial obligations of households that use payday loans. It shows both the amount of outstanding debts and monthly payments for several categories of credit for households that used payday loans in the last year, as well as the share of those households that had each category of debt. This information comes from the 2010 Survey of Consumer Finances (SCF). The SCF has detailed information on respondents' assets, debts, and income, but the number of payday borrowers in the data is not sufficiently large to allow estimates of the debts for payday borrowers in different income ranges.[927]

TABLE 4—DISTRIBUTION OF DEBT OBLIGATION CONDITIONAL BALANCES AND MONTHLY PAYMENTS AMONG PAYDAY BORROWERS [a]

Debt obligations	Mean	10th Pct.	Median	90th Pct.	Fraction of borrowers with outstanding debt obligation (percent)
Outstanding Balances					
Credit Cards	$3,287	$230	$1,300	$7,130	34
Revolving Charge Accounts [b]	3,351	300	750	6,000	9
Monthly Payments					
Housing Payments [c]	755	300	660	1,300	96
Lines of Credit [d]	196	20	135	405	4
Car Loans [e]	421	200	360	770	35
Student Loans	174	50	105	370	14
Other Consumer Loans	266	30	150	672	20
Total Balances and Payments					
All Credit Card and Charge Accounts	3,561	230	1,200	8,000	40
All Monthly Payments [f]	977	370	809	1,710	98
All Monthly Payments Minus Housing and Car Loan Payments	263	50	160	640	33

Source: 2010 Federal Reserve Board Survey of Consumer Finances.

[a] Households are identified as payday borrowers if a household member took out a payday loan during the past year.

[b] Revolving charge accounts at stores other than store accounts where a household has credit.

[c] Includes mortgage payments, rental payments, land contract payments, payments on home equity loans, and payments on home improvement loans.

[d] Payments on lines of credit (including home equity lines of credit).

[e] Includes personally owned cars, trucks, vans, and sport utility vehicles.

[f] Includes payments on housing, lines of credit, car loans, student loans, and other consumer loans.

Table 4 shows that 40 percent of households with payday loans have outstanding credit card debt, with an average balance above $3,500. An average credit card balance of approximately $3,500 would require a minimum monthly payment of just over $100.[928] It also shows that one third of payday households have other debts, with average monthly payments of $263. Given these other major financial obligations, and the need to account for other basic living expenses, it seems likely that a household would need monthly income substantially higher than $1,500 to be able to demonstrate an ability to repay a typical payday loan. For example, if a household needs $3,000 in monthly income to demonstrate an ability to repay a typical payday loan, an individual would need roughly $2,500. In the data the Bureau has analyzed, roughly one-third of payday borrowers have individual income above $2,500 per month.

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[927] These estimates show a substantially lower share of borrowers with credit cards than was found in a study that matched payday loan data with credit report information. That study found that 59 percent of payday borrowers had an outstanding balance on at least one credit card, with an average outstanding balance of $2,900.

There is an additional caveat to this analysis: The CEX expenditure data are for all households in a given income range, not households of payday borrowers. If payday borrowers have unusually high expenses, relative to their incomes, they would be less likely than the data here suggest to be able to demonstrate an ability to repay a payday loan. Conversely, if payday borrowers have unusually low expenses, relative to their incomes, they would be more likely to be able to borrower under the ATR approach. Given the borrowers' need for liquidity, however, it is more likely that they have greater expenses relative to their income compared with households generally. This may be particularly true around the time that borrowers take out a payday loan, as this may be a time of unusually high expenses or low income.

Online Payday Loans

The impact of the proposal on the online payday market is more difficult to predict. The simulations of the reborrowing restrictions and the ATR analysis described above each relate only to storefront loans.

There is no indication that online payday lenders would be more successful under the ATR approach than storefront lenders, and, in fact, it may be more difficult for them to satisfy the procedural requirements of that approach. The available information does not allow for reliably tracking sequences of online payday loans, as borrowers appear to change lenders much more often online and there is no source of data on all online lenders. If very long sequences of loans are less common for online loans, however, the reborrowing restrictions of both the ATR and Alternative approaches would have a smaller impact on online lenders.

Vehicle Title Lending

Vehicle title loans are not eligible for the Alternative approach, and therefore lenders making only vehicle title loans would only be able to make such loans to borrowers who the lender is able to determine have the ability to repay the loan. Table 5 shows the distribution of individual incomes of single-payment vehicle title borrowers.

TABLE 5—DISTRIBUTION OF INDIVIDUAL MONTHLY INCOME OF SINGLE-PAYMENT VEHICLE TITLE BORROWERS

Individual monthly income	Share of borrowers (percent)
$0—$499	2.9
$500—$999	13.2
$1000—$1499	19.9
$1500—$1999	20.1
$2000—$2499	13.0
$2500—$2999	8.9
$3000—$3499	7.5
$3500—$3999	3.3
$4000—$4999	4.7
$5000—$5999	2.4
$6000—$6999	1.6
$7000—$7999	0.7
$8000—$8999	0.5
$9000—$9999	0.2
$10,000+	1.2

Source: CFPB analysis of loan-level single-payment vehicle title loan data.

Table 5 shows that the incomes of vehicle title loan borrowers are slightly lower than those of payday loan borrowers. Vehicle title loans, however, are substantially larger than payday loans, with a median loan amount of nearly $700, twice that of payday loans.[929] Based on Tables 3 and 4, it appears that very few households with monthly income below $3,000 would be able to demonstrate an ability to repay a loan with a payment of $700, and even $3,000 would likely be insufficient. Based on the imputation of household numbers to individual borrowers, it appears that some individuals with monthly income between $1,500 and $2,000 would live in households with sufficient residual income to make a $700 payment, but that it is more likely that monthly individual income of $2,500 or more would be needed to have sufficient residual income to make such a payment. Table 5 shows that less than one third of vehicle title borrowers have monthly individual income above $2,500.

Putting aside the difficulty of developing precise estimates of the share of borrowers who would be able to demonstrate an ability to repay a loan, it is clear that the share would be smaller for vehicle title borrowers than payday borrowers simply because vehicle title borrowers have slightly lower incomes, on average, and single-payment vehicle title loans are substantially larger, on average, than payday loans.

Vehicle title lenders would also face the limitations of the ATR approach on making loans to borrowers during the term of and for 30 days following a prior covered short-term loan. The Bureau has published the results of simulations of the impacts of this restriction on the share of single-payment vehicle title loans that are currently made that could still be made under the proposal.[930] The simulations do not account for the effects of the main ATR determination but rather, as for the payday ATR simulations discussed above, assume that borrowers could not take out a loan within 30 days of repaying a prior loan. Depending on whether borrowers who currently take out long sequences of loans would return to borrow again after a 30-day period following repayment of a loan, the Bureau estimates that the re-borrowing restrictions of the ATR approach would prevent between 48 and 78 percent vehicle title loans that are currently made, with an equivalent reduction in loan volume and revenue.[931]

Combined with the effects of the ATR requirement, vehicle title lenders making single-payment loans would therefore likely experience greater reductions in the volume and associated revenue from these loans than would payday lenders.

(d). Overall Impacts on These Markets

For the reasons discussed above, the Bureau believes that the proposed rule would have a substantial impact on the markets for payday loans and single-payment vehicle title loans. The costs of the procedural requirements may have some impact on these markets, but the larger effects would come from the proposed limitations on lending.

Most of the costs associated with the procedural requirements of the proposed rule are per-loan (or per-application) costs, what economists refer to as ''marginal costs.'' Standard economic theory predicts that marginal costs would be passed through to consumers, at least in part, in the form of higher prices. As discussed above in part II, however, many covered loans are being made at prices equal to caps that are set by State law or State regulation; lenders operating in States with binding price caps would not be able to recoup those costs through higher prices. The new procedural costs to lenders making loans using the Alternative approach, however, would be quite small, primarily the costs of obtaining data from registered information systems and providing data to those same systems. Lenders making vehicle title loans, which cannot be made under the Alternative approach, would be required to incur the costs of using the ATR approach. Given the larger average size of these loans, these costs would likely have a limited impact on the price or availability of these loans. If lenders make smaller loans to comply with the ATR requirements, however, the relative importance of procedural costs could increase.

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[928] This assumes a 24 percent annual interest rate on the balance, with a minimum monthly payment calculated as all interest due plus one percent of the principal.

[929] *CFPB Payday Loans and Deposit Advance Products White Paper*, at 15; *CFPB Single-Payment Vehicle Title Lending*, at 6.

[930] *CFPB Report on Supplemental Findings*, at ch. 6.

[931] *CFPB Report on Supplemental Findings*, at 147.

The limitations on lending included in the proposed rule would have a much larger impact on lenders and on these markets than would the procedural costs. As described above, these limitations would have a substantial impact on the loan revenue of storefront payday and vehicle title lenders; the impact on online payday lenders is less clear but could be substantial as well. However, it is important to emphasize that these revenue projections do not account for lenders making any changes to the terms of their loans to better fit the proposed regulatory structure or in offering other products, for instance by offering a longer-term vehicle title loan with a series of smaller periodic payments instead of offering a short-term vehicle title loan. The Bureau is not able to model these effects. To the extent that lenders cannot replace reductions in revenue by adapting their products and practices, Bureau research suggests that the ultimate net reduction in revenue would likely lead to contractions of storefronts of a similar magnitude, at least for stores that do not have substantial revenue from other lines of business, such as check-cashing and selling money orders. This pattern has played out in States that have imposed new laws or regulations that have had a similar impact on lending revenue, where revenue-per-store has generally remained fairly constant and the number of stores has declined in proportion to the decline in revenue.[932]

With regard to evolution in product offerings, it is quite likely that lenders may respond to the requirements and restrictions in the proposed rule by adjusting the costs and features of particular loans. They may also change the range of products that they offer. If lenders are able to make these changes, it would mitigate their revenue losses. On individual loans, a loan applicant may not demonstrate an ability to repay a loan of a certain size with a certain payment schedule. The lender may choose to offer the borrower a smaller loan or, if allowed in the State where the lender operates, a payment schedule with a comparable APR but a longer repayment period yielding smaller payments. Lenders may also make broader changes to the range of products that they offer, shifting to longer-term, lower-payment installment loans, when these loans can be originated profitably within the limits permitted by State law.[933] If those loans were covered longer-term loans, lenders would be required to comply with the provisions of the proposal that relate to those loans, including the ATR requirement or one of the alternative approaches for covered longer-term loans. Because borrowers would normally be more likely to have the ability to repay a loan with lower payments, even if the payments extend over a longer period of time, the likelihood that such loans will satisfy the ATR requirement is generally higher, as discussed separately below.

Making changes to individual loans and to overall product offerings would impose costs on lenders even as it may serve to replace at least some lost revenues. Smaller individual loans generate less revenue for lenders. Shifting product offerings would likely have very little direct cost for lenders that already offer those products. These lenders would likely suffer some reduced profits, however, assuming that they found the previous mix of products to generate the greatest profits. Lenders who do not currently offer longer-term products but decide to expand their product range would incur a number of costs. These would include learning about or developing those products; developing the policies, procedures, and systems required to originate and service the loans; training staff about the new products; and, communicating the new product offerings to existing payday and single-payment vehicle title borrowers.

2. Benefits and Costs to Consumers

(a) Benefits to Consumers

The proposal would benefit consumers by reducing the harm they suffer from the costs of extended sequences of payday loans and single-payment auto-title loans, from the costs of delinquency and default on these loans, and from the costs of defaulting on other major financial obligations or being unable to cover basic living expenses in order to pay off covered short-term loans. Borrowers would also benefit when lenders adjusted their loan terms or product mix so that future loans are more predictable and ultimate repayment is more likely.

Eliminating Extended Loan Sequences

As discussed in greater detail in Market Concerns—Short-Term Loans, there is strong evidence that borrowers who take out storefront payday loans and single-payment vehicle title loans often end up taking out many loans in a row. This evidence comes from the Bureau's own work, as well as analysis by independent researchers and analysts commissioned by industry. Each subsequent single-payment loan carries the same cost as the initial loan that the borrower took out, and there is evidence that many borrowers do not anticipate these long sequences of loans. Borrowers who do not intend or expect to have to roll over or reborrow their loans, or expect only a short period of reborrowing, incur borrowing costs that are several times higher than what they expected to pay. The limitations on making loans to borrowers who have recently had covered loans that would apply under either the ATR approach or the Alternative approach would eliminate these long sequences of loans.

Evidence on the prevalence of long sequences of loans in storefront payday lending and single-payment vehicle title lending is discussed in Market Concerns—Short-Term Loans. Based on analysis by the Bureau, by academic and other researchers, by State government agencies, and on a report submitted by several of the SERs as part of the SBREFA process, several key findings emerge. First, the majority of new payday and single-payment vehicle title loans result in reborrowing. With slight variation depending on the particular analysis, from approximately one-in-three to one-in-five payday loans and approximately one-in-eight single-payment vehicle title loans is repaid without reborrowing, while about half of loans lead to sequences at least four loans long, for both types of loan.[934] A significant percentage of borrowers have even longer sequences; about a third of either type of loan leads to sequences seven loans long, and about a quarter lead to sequences 10 loans long or longer. And, a small number of borrowers have extremely long sequences that go on for years. An analysis by an industry research group found that 30 percent of payday borrowers who took out a loan in a particular month also took out a loan in a month four years later. For this group, the median time in debt over that period was over two years, and nine percent of the group had a loan *in every pay period across the four years*.[935]

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[932] *CFPB Report on Supplemental Findings,* at ch. 3.

[933] An analysis by researchers affiliated with a specialty consumer reporting agency estimated that roughly half of storefront payday borrowers could demonstrate ability to repay a longer-term loan with similar size and APR to their payday loan, but noted that these loans would not be permitted in a number of States because of State lending laws and usury caps. nonPrime 101, *Report 8: Can Storefront Payday Borrowers Become Installment Loan Borrowers?,* at 3 (December 2, 2015) *available at https://www.nonprime101.com/wp-content/uploads/2015/12/Report-8-Can-Storefront-Payday-Borrowers-Become-Installment-Loan-Borrowers-Web-61.pdf.*

The available empirical evidence demonstrates that borrowers who take out long sequences of payday loans and vehicle title loans do not anticipate those long sequences.[936] Two studies have asked payday and vehicle title borrowers about their expectations about how long it takes to repay payday loans, and not reborrow shortly thereafter, and compared their responses with actual repayment behavior of the overall borrower population.[937] These studies did not compare borrowers' predictions with their own borrowing experiences, but did show that borrowers appear, on average, somewhat optimistic about reborrowing.

One study asked borrowers about their expectations for reborrowing and compared that with their actual borrowing experience.[938] As explained in more detail in Market Concerns—Short-Term Loans above, it found that borrowers who wound up with very long sequences of loans had rarely expected those long sequences; in fact they were no more likely to expect long sequences than were other borrowers. A smaller share of borrowers, 40 percent, expected to reborrow than the 60 percent who actually did. And, borrowers did not appear to become better at predicting their own borrowing, as those who had borrowed most heavily in the past were most likely to underestimate their future reborrowing.

Two nearly identical surveys, one conducted in 2013 and one in 2016, of borrowers who had recently repaid a loan and not reborrowed asked if it had taken as long as the borrower had initially expected to repay the loan.[939] They found that the overwhelming majority of borrowers stated that it had not taken longer than they expected. This approach, however, may suffer from recall problems, as borrowers were asked about what they expected in the past and whether their expectations were accurate. From the wording of the survey it is also not clear if borrowers would have understood the question to refer to the actual loan they had recently repaid, or to the original loan they had taken out that led to the loan sequence.

It is less clear how large the benefits from the limitations on rapid repeat borrowing would be for borrowers who take out online payday loans. As described above, available information does not allow for reliably tracking sequences of online payday loans, as borrowers appear to change lenders much more often online and there is no source of data on all online lenders. If very long sequences of loans are less common for online loans, however, the costs of those sequences would be less and the benefits to consumers of preventing long sequences would be smaller.

Reduced Defaults and Delinquencies

The Bureau believes that borrowers taking out covered short-term loans would experience substantially fewer defaults under the proposed rule, for two reasons. First, borrowers who take out loans from lenders that use the ATR approach would go through a meaningful evaluation of their ability to make the payment or payments on the loan. The borrowers whom lenders determine would have sufficient residual income to cover each loan payment and meet basic living expenses over the term of the loan, and 30 days thereafter, would likely pose a substantially lower risk of default than the average risk of borrowers who currently take out these loans. Second, lenders' ability to make long sequences of loans to borrowers would be greatly curtailed, whether lenders use the ATR or Alternative approach. This would give lenders a greater incentive to screen borrowers to avoid making loans that are likely to default. Currently, borrowers who have difficulty repaying a loan in full usually have the option of paying just the finance charge and rolling the loan over, or repaying the loan and then quickly reborrowing. The option to reborrow may make borrowers willing to make a payment they know they cannot actually afford, given their other obligations or expenditure needs. This ability to continue to reborrow allows borrowers to put off defaulting, which may allow them to ultimately repay the loan. If continued reborrowing does not allow them to ultimately repay the loan, the lender will still have received multiple finance charges before the borrower defaults.[940] Each of these effects, the ability to put off default and the ability to collect multiple finance charges, makes borrowers with a higher likelihood of default more attractive to lenders than they would be if the restrictions on reborrowing in the proposal were to take effect.

Borrowers who are more likely to default are also more likely to have late payments; reducing the rate of defaults would also reduce the rate of late payments and the harm associated with those late payments. Late payments on payday loans, defined as a payment that is sufficiently late that the lender deposits the borrower's check or attempts to collect using the ACH authorization, appear to range from seven [941] to over 10 percent.[942] At the borrower level, two different sources show that 39 to 50 percent of borrowers have a check deposited that bounces in their first year of payday borrowing.[943] These late payments are costly for borrowers. If a lender deposits a check or submits a payment request and it is returned for insufficient funds, the borrower's bank or credit union will likely charge the borrower an NSF fee of approximately $35, and the lender will likely charge a returned-item fee. In addition, analysis the Bureau has conducted of payment requests from online lenders shows that substantial numbers of payments that are made are overdrafts.[944] Fees for overdrafts are generally equal to NSF fees at the same institution. Consumers would also benefit from the mitigations of the harm from NSF and overdraft transactions by the proposed limitations on payment practices and related notices described in the section-by-section analysis of §§ 1041.14 and 1041.15.

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[934] *See CFPB Data Point: Payday Lending,* at 10-11; *CFPB Single-Payment Vehicle Title Lending,* at 10-11; *CFPB Report on Supplemental Findings,* at ch. 5; Charles River Associates, *Economic Impact on Small Lenders of the Payday Lending Rules Under Consideration by the CFPB* (2015), *available at http://www.crai.com/publication/economic-impact-small-lenders-payday-lending-rules-under-consideration-cfpb*; Tennessee Dep't of Fin. Insts., *Biennial Report on the Title Pledge Industry,* at 8 (2016) *available at http://www.tennessee.gov/assets/entities/tdfi/attachments/Title_Pledge_Report_2016_Final_Draft_Apr_6_2016.pdf.*

[935] nonPrime 101, *Report 7-C, A Balanced View of Storefront Payday Borrowing Patterns: Results from a Longitudinal Random Sample over 4.5 Years,* at Table A-7 (March 28, 2016) *available at https://www.nonprime101.com/data-findings/.*

[936] The evidence described in this section is discussed in greater detail in Market Concerns—Short-Term Loans.

[937] Kathryn Fritzdixon, Jim Hawkins, & Paige Marta Skiba, *Dude, Where's My Car Title?: The Law, Behavior, and Economics of Title Lending Markets,* 2014 U. Ill. L. Rev. 1013 (2014), *available at https://illinoislawreview.org/wp-content/ilr-content/articles/2014/4/Hawkins,Skiba,&Fritzdixon.pdf*; Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing,* 66 J. Fin. 1865 (2011), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01698.x/full.*

[938] Robert Mann, *Assessing the Optimism of Payday Loan Borrowers,* 21 Sup. Ct. Econ. Rev. 105 (2014) (assessing the optimism of payday borrowers); Email from Ronald Mann, Professor, Columbia Law School, to Jialan Wang & Jesse Leary, Bureau of Consumer Fin. Prot. (Sept. 24, 2013, 1:32 EDT).

[939] Tarrance Group, *et al.,* Borrower and Voter Views of Payday Loans (2016), *http://www.tarrance.com/docs/CFSA-BorrowerandVoterSurvey-AnalysisF03.03.16.pdf* (last visited May 29, 2016); Harris Interactive, Payday Loans and the Borrower Experience (2013), *http://cfsaa.com/Portals/0/Harris_Interactive/CFSA_HarrisPoll_SurveyResults.pdf* (last visted May 29, 2016).

[940] To put it another way, a lender considering making a loan to a borrower who has not recently taken out a payday or single-payment vehicle title loan presumably considers the expected credit losses on the sequence of loans that the borrower will take out, as well as the expected revenue from the sequence of loans. Restrictions on the number of loans the borrower can take out in sequence would lower the expected revenue from the loan sequence. This means that some loan sequences that have positive expected revenue, net of default costs, without restrictions on reborrowing will have negative expected net revenue with restrictions on reborrowing, and therefore would be less likely to be originated.

Default rates on individual payday loans are fairly low, 3 percent in the data the Bureau has analyzed.[945] But, as noted above, a substantial majority of borrowers takes out more than one loan in sequence before repaying the debt or defaulting. A more meaningful measure of default is therefore the share of loan sequences that end in default. The Bureau's data show that, using a 30-day sequence definition, 20 percent of loan sequences end in default. Other researchers have found similar high levels of default at the borrower level. A study of payday borrowers in Texas found that 4.7 percent of loans were charged off but 30 percent of borrowers had a loan charged off in their first year of borrowing.[946]

Less information is available on the delinquency and default rates for online payday loans. In a 2014 analysis of its consumer account data, a major depository institution found that small dollar lenders, which include lenders making a range of products including payday loans, had an overall return rate of 25 percent for ACH payments. The Bureau's report on online payday loan payments practices presents rates of failed payments for online lenders exclusively.[947] It shows a lower rate of payment failure; six percent of payment attempts that were not preceded by a failed payment attempt themselves failed.[948] Default rates are more difficult to determine, but 42 percent of checking accounts with failed online loan payments are subsequently closed.[949] This provides a rough measure of default on these loans.

Default rates on single-payment vehicle title loans are higher than those on payday loans. In the data analyzed by the Bureau, the default rate on all loans is 6 percent, and the sequence-level default rate is 33 percent. In the data the Bureau has analyzed, 3 percent of all single-payment vehicle title loans lead to repossession, and at the sequence level, 20 percent of sequences end with repossession. So, at the loan level and at the sequence level, slightly more than half the time default leads to repossession of the borrower's vehicle.

The range of potential impacts on a borrower of losing a vehicle to repossession depends on the transportation needs of the borrower's household and the available transportation alternatives. According to two surveys of vehicle title loan borrowers, 15 percent of all borrowers report that they would have no way to get to work or school if they lost their vehicle to repossession.[950] Thirty-five percent of borrowers pledge the title to the only working vehicle in the household.[951] Even those with a second vehicle or the ability to get rides from friends or take public transportation would presumably experience significant inconvenience or even hardship from the loss of a vehicle.

Harms From Making Unaffordable Payments

Consumers would also benefit from a reduction in the other financial hardships that may arise because borrowers, having taken out a loan with unaffordable payments, feel compelled to take painful measures to avoid defaulting on the covered short-term loans. If a lender has taken a security interest in the borrower's vehicle, the borrower may decide not to pay other bills or forgo crucial expenditures because of the leverage that the threat of repossession gives to the lender. The repayment mechanisms for some covered short-term loans can also cause borrowers to lose control over their own finances. If a lender has the ability to withdraw payment directly from a borrower's checking account, especially when the lender is able to time the withdrawal to the borrower's payday, the borrower may lose control over the order in which payments are made and may be unable to choose to make essential expenditures before repaying the loan.

Changes to Loan Structure

Consumers may benefit if lenders respond to the proposed rule by modifying the terms of individual loans or if lenders adjust the range of products they offer. Borrowers offered smaller loans may benefit if this enables them to repay the loan, when they would otherwise be unable to repay and experience the costs associated with reborrowing, default, or the costs of being unable to pay for other financial obligations or living expenses. If lenders shift from payday loans or single-payment vehicle title loans to longer-term loans, consumers may benefit from lower payments that make it more feasible for the borrowers to repay. And, the financing costs of longer-term loans are likely to be easier for borrowers to predict, given the high rate of unanticipated reborrowing of short-term loans, and therefore borrowers may be less likely to end up in a loan that is substantially more expensive than they anticipated.[952]

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[941] "For the years ended December 31, 2011 and 2010, we deposited customer checks or presented an Automated Clearing House ("ACH") authorization for approximately 6.7 percent and 6.5 percent, respectively, of all the customer checks and ACHs we received and we were unable to collect approximately 63 percent and 64 percent, respectively, of these deposited customer checks or presented ACHs. Total charge-offs, net of recoveries, for the years ended December 31, 2011 and 2010 were approximately $106.8 million and $108 million, respectively." Advance America, 2011 Annual Report (Form 10-K), *available at http://www.sec.gov/Archives/edgar/data/1299704/000104746912002758/a2208026z10-k.htm.*

[942] Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default,* at 6 (Vanderbilt University Law School, Law and Economics Working Paper #08-33, 2008), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319751&download=yes* [hereinafter Skiba & Tobacman].

[943] *Id.;* Montezemolo & Wolff, at 5.

[944] The Bureau's analysis shows that 6 percent of payment requests that were not preceded by a payment request that was returned for insufficient funds are returned for insufficient funds and 6 percent are paid as overdrafts. *CFPB Online Payday Loan Payments.*

[945] Default here is defined as a loan not being repaid as of the end of the period covered by the data or 30 days after the maturity date of the loan, whichever was later.

[946] Skiba & Tobacman, at Table 2.

[947] *CFPB Online Payday Loan Payments.*

[948] *CFPB Online Payday Loan Payments,* at Table 1. This analysis includes both online and storefront lenders. Storefront lenders normally collect payment in cash and only deposit checks or submit ACH requests for payment when a borrower has failed to pay in person. These check presentments and ACH payment requests, where the borrower has already failed to make the agreed-upon payment, have a higher rate of insufficient funds.

[949] *CFPB Online Payday Loan Payments,* at Table 5.

[950] Fritzdixon, *et al.,* at 1038.

[951] Pew Charitable Trusts, *Auto Title Loans, Market Practices and Borrower Experiences,* at 14 (2015). *available at http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

(b). Costs to Consumers and Access to Credit

The procedural requirements of the rule would make the process of obtaining a loan more time consuming and complex for some borrowers. The restrictions on lending included in the proposal would reduce the availability of storefront payday loans, online payday loans, and single-payment vehicle title loans. Borrowers may experience reduced access to new loans, *i.e.*, loans that are not part of an existing loan sequence. Some borrowers would also be prevented from rolling loans over or reborrowing shortly after repaying a prior loan. And, some borrowers may still be able to borrow, but for smaller amounts or with different loan structures, and find this less preferable than the terms they would receive absent the proposal.

Procedural Requirements

The procedural requirements for lenders would make the process of obtaining a loan more time consuming for some borrowers. This would depend on whether lenders use the ATR approach or the Alternative approach, and the extent to which lenders automate their lending processes. In particular, borrowers taking out payday loans originated under the Alternative approach from lenders that automate the process of checking their records and obtaining a report from a registered information system would see little, if any, increase in the time to obtain a loan. Borrowers taking out loans from lenders using the ATR approach are more likely to experience additional complexity. Storefront payday borrowers may be required to provide more income documentation than is currently required (for example, documentation for more than one pay period) and may also be required to document their housing expenses. Online payday borrowers and vehicle title borrowers would be required to provide documentation of the amount and timing of their income, which currently is often not required, and also may be required to document their housing expenses. All of these borrowers would be asked to fill out a form listing the amount and timing of their income and payments on major financial obligations. If the lender orders consumer reports manually and performs the calculations by hand necessary to determine that the borrower has the ability to repay the loan, this could add 20 minutes to the borrowing process. And, if a borrower is unaware that it is necessary to provide certain documentation required by the lender, this may require a second trip to the lender. Finally, borrowers taking out loans online may need to upload verification evidence, such as by taking a photograph of a pay stub, or facilitate lender access to other information sources.

Reduced Access to Initial Loans

Initial covered short-term loans, those taken out by borrowers who have not recently had a covered short-term loan, are presumably taken out because of a need for credit that is not the result of prior borrowing of covered short-term loans. Borrowers may be unable to take out new loans—loans that are not taken during the term of and for 30 days following a prior covered loan—for a number of reasons. They may only have access to loans made under the ATR approach and be unable to demonstrate an ability to repay the loan under the proposal or be unable to satisfy additional underwriting requirements adopted by lenders to mitigate risk in light of the reduced revenue potential resulting from the lower reborrowing that is permitted.

Payday borrowers are not likely to be required to satisfy an ATR requirement unless and until they have exhausted the limits on loans available to them under the Alternative approach. However, to obtain loans under the Alternative approach, borrowers may be required to satisfy more exacting underwriting requirements than are applied today as lenders adopt measures in response to the Alternative approach's limits on reborrowing. Moreover, after exhausting the limits on Alternative approach loans, borrowers would be required to satisfy the ATR requirement to start a new sequence.

The direct effects of the Alternative approach on borrowers' ability to take out loans when they have not recently had a loan would be quite limited. The Bureau estimates that only 6 percent of initial payday loans taken out currently, that are not part of an existing sequence, would be prevented by the annual limits, and 7 percent of borrowers would be affected.[953] That is, only 6 percent of the loans that are most likely to reflect a new need for credit would be affected by these annual limits on borrowing. These borrowers would then have to satisfy the ATR test in order to start a new sequence.

Vehicle title borrowers are more likely to find themselves unable to obtain an initial loan because the Alternative approach does not provide for vehicle title loans and thus these borrowers would have to satisfy the ATR requirement, as well as any additional underwriting limitations imposed by the lender. Many of these consumers could choose to pursue a payday loan instead and seek to avail themselves of the Alternative approach. However, there are two States that permit vehicle title loans but not payday loans, and 15 percent of vehicle title borrowers do not have a checking account and thus would not be eligible for a payday loan.[954] In addition, many States limit the size of payday loans but not the size of vehicle title loans, so some borrowers may prefer a vehicle title loan. For all of these borrowers, their ability to obtain an initial loan would be dependent upon their ability to demonstrate an ability to repay and satisfy any other underwriting requirements the lender may impose.

Consumers who are unable to start new loan sequences because they cannot satisfy the ability-to-repay requirement and have exhausted or cannot qualify for a loan under the Alternative approach would bear some costs from reduced access to credit. They may be forced to forgo certain purchases or delay paying existing obligations, such as paying bills late, or may choose to borrow from sources that are more expensive or otherwise less desirable. Some borrowers may overdraft their checking account; depending on the amount borrowed, overdrafting on a checking account may be more expensive than taking out a payday or single-payment vehicle title loan. Similarly, "borrowing" by paying a bill late may lead to late fees or other negative consequences like the loss of utility service. Other consumers may turn to friends or family when they would rather borrow from a lender. And, some consumers may take out online loans from lenders that do not comply with the proposed regulation.[955]

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[952] Note that longer-term loans have other costs that borrowers may not fully anticipate, such as the specific costs and consequences associated with default. These costs are discussed in Market Concerns—Longer-Term Loans.

[953] *CFPB Report on Supplemental Findings*, at 149. If borrowers, as discussed above in part VI.F.1(c), who have loan sequence cut short by the reborrowing restrictions return to reborrow as soon at the 30-day limitation on reborrowing has ended, a larger portion of these potential new sequences would be affected. If all borrowers were to behave in this way, 9 percent of potential initial new loans could not be originated under that Alternative approach, affecting 11 percent of borrowers.

[954] The 2013 FDIC National Survey of Unbanked and Underbanked Households finds that 15 percent of consumers reporting having used an auto title loan in the prior 12 months are unbanked.

Survey evidence provides some information about what borrowers are likely to do if they do not have access to these loans. Using the data from the CPS Supplement, researchers found that the share of households using pawn loans increased in States that banned payday loans, to a level that suggested a large share of households that would otherwise have taken out payday loans took out pawn loans, instead.[956] A 2012 survey of payday loan borrowers found that a majority indicated that if payday loans were unavailable they would reduce expenses, delay bill payment, borrow from family or friends, and pawn personal items. Some did indicate, however, that they would get a bank or credit union loan or use a credit card to cover expenses.[957]

In data collected by the Bureau from banks that ceased offering DAP, there was no evidence that reduced access to these products led to greater rates of overdrafting or account closure.[958]

Limits on Loan Size

Lenders making loans using the Alternative approach could not make loans larger than $500. This would limit the availability of credit to borrowers who would seek a larger loan, and either do not have access to loans under the ATR approach or could not demonstrate their ability to repay the larger loan. In the data analyzed by the Bureau, however, the median payday loan is only $350, and some States impose a $500 maximum loan size, so most existing payday loans would fall at or below the $500 maximum.[959] Any borrowers that would have preferred a vehicle title loan but instead obtain a payday loan originated under the Alternative approach may be more affected by the loan size limit, as the median single-payment vehicle title loan is for nearly $700.[960]

Limits on Reborrowing

For storefront payday borrowers, most of the reduction in the availability of credit would likely take the form of borrowers who have recently taken out loans being unable to roll their loans over or borrow again within a short period of time. As discussed above, the Bureau believes that most storefront payday lenders would employ the Alternative approach to making loans. If lenders only make loans under the Alternative approach, each successive loan in a sequence would have to reduce the amount borrowed by at least one-third of the original principal amount, with a maximum of three loans per sequence, and borrowers would only be able to take out six covered short-term loans per year or be in debt on such loans for at most 90 days over the course of a year.[961] This restriction would limit borrowers paid monthly to as few as three loans per year, depending on the timing of when they take out their loans, relative to when they are paid. If lenders make both ATR approach loans and Alternative approach loans, borrowers who could demonstrate an ability to repay a loan could take out ATR approach loans even if they could no longer take out an Alternative approach loan because of the annual caps.

As described above, consumers would benefit from not having long sequences of loans that lead to higher borrowing costs than they anticipate. Some borrowers, however, may experience costs from not being able to continue to re-borrow. For example, a borrower who has a loan due and is unable to repay one-third of the original principal amount (plus finance charges and fees) but who anticipates an upcoming windfall may experience costs if they are unable to re-borrow the full amount due because of the restrictions imposed by the proposed rule. These costs could include the costs of being delinquent on the loan and having a check deposited or ACH payment request submitted, either of which may lead to an NSF fee. Borrowers in this exact situation may be likely to ultimately repay the loan, given the upcoming windfall, but it is conceivable that borrowers who lose the ability to continue to borrow after taking out a payday loan could be more likely to default. The Bureau does not believe, however, that the restrictions on lending would lead to increases in borrowers defaulting on payday loans, in part because the step-down provisions of the proposed Alternative approach are designed to help the consumer reduce their debt over subsequent loans. This step-down approach should reduce the risk of payment shock and lower the risk to lenders and borrowers of borrowers defaulting when a lender is unable to continue to lend to them.

Borrowers taking out single-payment vehicle title loans would also be much less likely to be able to roll their loans over or borrow again within a short period of time than they are today. These borrowers would potentially suffer the same costs as those borne by payday borrowers taking out loans under the ATR approach who would prefer to roll over or reborrow rather than repay their loan without reborrowing.

Reduced Geographic Availability of Covered Short-Term Loans

Consumers would also have somewhat reduced physical access to payday storefront locations. Bureau research on States that have enacted laws or regulations that substantially impacted the revenue from storefront lending indicates that the number of stores has declined roughly in proportion to the decline in revenue.[962] Because of the way payday stores locate, however, this has had much less impact on the geographic availability of payday loans. Nationwide, the median distance between a payday store and the next closest payday store is only 0.3 miles. When a payday store closes in response to laws that reduce revenue, there is usually a store nearby that remains open. Across several States with regulatory changes, between 93 and 95 percent of payday borrowers had to travel less than five additional miles to find a store that remained open, which is roughly the median travel distance for payday borrowers nationwide. Using the revenue impacts calculated above for storefront lenders just using the

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[955] It has been suggested that some borrowers might turn to traditional in-person illegal lenders, or "loan sharks." The Bureau is unaware of any data on the current prevalence of illegal lending in the United States by individuals. Nor is the Bureau aware of any data suggesting that such illegal lending is more prevalent in States in which payday lending is not permitted than in States which permit payday lending or any evidence that the amount of such lending increased in States which repealed their payday lending prohibitions.

[956] Neil Bhutta, Jacob Goldin, & Tatiana Homonoff, *Consumer Borrowing After Payday Loan Bans*, at 1 (Nov. 24, 2014), available at *http://www.human.cornell.edu/pam/people/upload/ConsumerBorrowing_BhuttaGoldinHomonoff.pdf.*

[957] Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why* (2012), at 14-16, *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.*

[958] *CFPB Report on Supplemental Findings*, at 39.

[959] *CFPB Payday Loans and Deposit Advance Products White Paper*, at 15.

[960] *CFPB Single-Payment Vehicle Title Lending*, at Table 1.

[961] Prior loans made using the ATR approach would count towards the maximum number of loans and maximum time in debt limits of the Alternative approach.

[962] *CFPB Report on Supplemental Findings*, at ch. 3. This is consistent with theoretical research showing that state price caps should lead to fewer stores and more borrowers per store (*see* Mark Flannery & Katherine Samolyk, *Scale Economies at Payday Loan Stores*, Proceedings of the Federal Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure and Competition, at 233-259 (May 2007), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2360233*) as well as empirical analysis showing a correlation between state price caps and the number of stores per state resident, Pew Charitable Trusts, Fact Sheet, *How State Rate Limits Affect Payday Loan Prices* (April 2014), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs/content-level_pages/fact_sheets/stateratelimitsfactsheetpdf.pdf.*

Alternative Approach, which were about 70 percent without accounting for additional ATR lending or for changes in product terms or mixes,[963] the Bureau forecasts that a large number of storefronts would close if the proposed rules were adopted, but that consumers' geographic access to stores would not be substantially affected in most areas.

(c.) Evidence on the Benefits and Costs to Consumers of Access to Payday and Other Covered Loans

A number of studies have been conducted on the effects of consumers having access to storefront payday loans. There is a much smaller literature on the effects of access to online loans, and very little research that can describe the effects of access to vehicle title lending.

It is important to stress that most prior research has addressed the question of what happens when all access to a given form of credit is cut off. As described above, the proposed regulation would not ban any of these products, and the evidence from States that have imposed strong restrictions on lending, but not outright or de facto bans, is that even after large contractions in this industry, loans remain widely available in terms of physical locations.

The evidence on the effects on consumers of access to storefront payday loans is mixed, with some studies finding positive effects from access to loans, others no effects, and others finding that consumers are made worse off when loans are available. Some evidence suggests that the consumers who are most likely to benefit from access to payday loans are those that have experienced a discrete short-term loss of income or a one-time expense, such as from a natural disaster. If payday lenders make loans using the Alternative approach, the proposed regulation would not prevent people in these situations from taking out loans; they would be prevented from taking out many loans in a row, but if they are truly facing a short-term need and can quickly repay this restriction would not affect them. The limited evidence on which consumers tend to take out many loans in a row suggests that it is consumers who chronically have expenses greater than their income, rather than consumers with unusual one-time drops in income or increases in expenses.

There are fewer studies on the effects of online lending on borrowers, but those consistently show negative effects of these loans with respect to outcomes like overdrafts and insufficient funds.

Most studies of the effects of payday loans on consumer welfare have relied on State-level variation in laws governing payday lending. Morgan, et. al., (2008), studying a number of State law changes over a ten-year period, found that payday bans were associated with higher rates of bounced checks.[964] They also found that bans were associated with higher rates of complaints about debt collectors to the FTC, but lower rates of Chapter 13 bankruptcy filings. Campbell, et. al., (2008), however, found that Georgia's payday ban appeared to improve consumer's outcomes, as consumers living in counties further from bordering States that allowed payday lending had lower rates of involuntary checking account closures.[965] Bhutta, et. al. (2008), using data from the Current Population Survey, saw weak evidence of an increase in involuntary account closings after the imposition of State bans of payday loans, but this effect did not persist.[966]

In data collected by the Bureau from banks that ceased offering DAP, there was no evidence that reduced access to these products led to greater rates of overdrafting or account closure.[967]

Melzer (2011) measured access to payday loans of people in States that do not allow payday lending using distance to the border of States that permit payday lending.[968] He measured the effects of access on the payment of mortgages, rent and utilities, and found that greater access causes greater difficulty in paying these basic expenses, as well as delays in needed medical care. In a follow-up study, Melzer (2014), found higher Supplemental Nutritional Assistance Program (food stamp) usage and lower child-support payments with greater payday availability.[969]

Zinman (2010) conducted a survey of payday loan users in Oregon and Washington both before and after a new law took effect in Oregon that limited the size of payday loans and reduced overall availability of these loans.[970] He showed that the law appeared to increase consumer hardship, measured by unemployment and qualitative self-assessments of current and expected future financial conditions, over the subsequent five months.

Morse (2009) looked at the impact of the availability of payday loans in particular circumstances, natural disasters.[971] Using information about the concentration of payday lenders by zip code and linking it to data on natural disasters, she found that greater access to payday lending in times of disaster—which may generalize to unexpected personal emergencies—reduces home foreclosures and small property crime. Dobridge (2014) found that in normal times access to payday loans reduced consumer well-being, as measured by purchases of consumer durable goods.[972] But, similar to Morse (2009), Dobridge found that in times of severe weather, access to payday loans allowed consumers to smooth consumption and avoid declines in food spending or missed mortgage payments.

Carrell and Zinman (2008)[973] developed a measure of payday loan access similar to that used by Morse (2009) and linked it to the job performance of Air Force personnel, showing that greater access to payday lending leads to worse job performance to such an extent that fewer are eligible for reenlistment. Carter and Skimmyhorn (2015) used the implementation of the MLA, which effectively banned payday loans to military personnel, to measure the impact of payday loans on financial well-being and labor market outcomes of soldiers in the Army.[974] Unlike Carrell and Zinman, they found no effects. They speculated that some of the difference in the outcomes of the two preceding studies could reflect the fact that re-enlisting in the Army was easier than re-enlisting in the Air Force during the time periods covered by the respective studies.

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[963] *CFPB Report on Supplemental Findings,* at 149. It is important to note that the estimates for the reduction in lending above may underestimate impacts in some ways and overestimate them in others. For example, store closures may cause total lending to fall further. A small share of potential borrowers will lose easy access to stores. In addition, the reduced physical presence and therefore visibility of stores, even in areas where as store is fairly close by, may lead to some consumers not taking out loans, or borrowing less, because they are not reminded as frequently of the availability of payday loans. Some lenders, however, may successfully adapt to the proposed regulation by, for example, broadening the range of products they offer. The ability to do this will vary across States and across individual lenders.

[964] Donald P. Morgan & Michael R. Strain, *Payday Holiday: How Households Fare after Payday Credit Bans,* FRB of New York Staff Reports, No. 309, at 3 (Revised Feb. 2008).

[965] Dennis F. Campbell, Asís Martínes-Jerez, & Peter Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures,* 36 J. of Banking & Fin. 1224.

[966] Bhutta, Goldin, & Homonoff, *Consumer Borrowing After Payday Loan Bans,* at 1.

[967] *CFPB Report on Supplemental Findings,* at 39.

[968] Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market,* 162 Quarterly J. of Econ. 517 (2011), *available at http://qje.oxfordjournals.org/content/126/1/517.*

[969] Brian T. Melzer, *Spillovers from Costly Credit* (Aug. 2014), *available at http://www.kellogg.northwestern.edu/faculty/melzer/papers/spillovers%20from%20costly%20credit_08_13_14.pdf.*

[970] Jonathan Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects around the Oregon Rate Cap,* 34 J. Banking & Fin. 546 (2009), *available at http://www.dartmouth.edu/~jzinman/Papers/Zinman_RestrictingAccess_jbf_forth.pdf.*

[971] Adair Morse, *Payday Lenders: Heroes or Villians?,* 102 J. of Fin. Econ. 28 (2011), *available at http://www.sciencedirect.com/science/article/pii/S0304405X11000870.*

[972] Christine L. Dobridge, Heterogeneous Effects of Household Credit: The Payday Lending Case (working paper, Nov. 2014), *available at https://fnce.wharton.upenn.edu/files/?whdmsaction=public:main.file&fileID=8601.*

[973] Scott Carrell & Jonathan Zinman, *In Harm's Way? Payday Loan Access and Military Personnel Performance,* 27 Rev. Fin. Studies 2805 (2013), *available at https://www.dartmouth.edu/~jzinman/Papers/PayDay_AirForce_aug08.pdf.*

Another study used the implementation of the MLA to measure the effects of payday loans on the ability of consumers to smooth their consumption between paydays, and found that access to payday loans did appear to make purchasing patterns less concentrated around paydays (Zaki, 2013).[975] This study also found some evidence that access to payday loans increased what the author referred to as "temptation purchases," specifically alcohol and consumer electronics.

Other studies, rather than using differences across States in the availability of payday loans, have used data on borrowers who apply for loans and are either offered loans or are rejected. Skiba and Tobacman (2015) in using this approach found that taking out a payday loan increases the likelihood that the borrower will file for Chapter 13 bankruptcy.[976] They found that initial approval for a payday loan essentially doubled the bankruptcy rate of borrowers. Bhutta, et. al., (2015) used a similar approach to measure the causal effects of storefront borrowing on borrowers' credit scores.[977] They found that obtaining a loan had no impact on how the consumers' credit scores evolved over the following months. The authors noted, however, that applicants generally had very poor credit scores both prior to and after borrowing (or being rejected for) a payday loan. In each of these studies, the authors were unable to determine whether borrowers that were rejected by the lender from which they had data were able to take out a loan from another lender.

Baugh (2015) used the closure of dozens of online payday lenders, which cut off borrowers' access to such loans and other high-cost online credit, to measure the effects of these loans on consumers' consumption, measured via expenditures on debit and credit cards, and on overdrafts and insufficient funds transactions.[978] He found that losing access to these loans, especially for consumers who had been heavy users of these loans, led to increased consumption and fewer overdrafts or NSF transactions.

The UK Financial Conduct Authority (FCA)[979] used an approach similar to that used by Skiba and Tobacman (2014) and Bhutta, et. al., (2015) to study the effects of taking out payday loans on United Kingdom borrowers' future overdrafting, rates of delinquency on other loan products, subjective well-being, and feelings of regret about borrowing. The products studied are similar to payday loans in the United States, primarily single-payment loans due in roughly 30 days. While the UK market includes storefront lenders, it is dominated by online lenders. The FCA found that online payday loans led to higher rates of bank overdraft and delinquencies on other loans. While it had no effect on subjective measures of well-being, borrowers did report regretting the decision to take out the payday loan.

Two other studies have used data on payday borrowing and repayment behavior to compare changes over time in credit scores for different groups of borrowers. Priestley (2014) measured changes over time in credit scores for borrowers who re-borrowed different numbers of times, and found that in some cases it appeared that borrowers who re-borrowed more times had slightly more positive changes in their credit scores.[980] These differences were not economically meaningful, however, with each additional loan being associated with less than one point in credit score increase.[981] Mann (2014) compared the changes in credit scores of borrowers who defaulted on their loans with borrowers who did not, and also found no difference.[982] Similar to the Bhutta, et. al., study, neither of these studies found a meaningful effect of payday loan borrowing behavior on credit scores. Unlike Bhutta, et. al. (2015), however, if either had measured an effect it would have simply been a finding of correlation, as neither had a way of identifying an effect as causal.

In reviewing the existing literature, the Bureau believes that the evidence on the impacts of the availability of payday loans on consumer welfare is mixed. A reasonable synthesis appears to be that payday loans benefit consumers in certain circumstances, such as when they are hit by a transitory shock to income or expenses, but that in more general circumstances access to these loans makes consumer worse off. The Bureau reiterates the point made earlier that the proposed rule would not ban payday or other covered short-term loans, and believes that covered short-terms loans would still be available in States that allow them to consumers facing a truly short-term need for credit.

G. Potential Benefits and Costs of Proposed Rule to Covered Persons and Consumers—Provisions Relating Specifically to Covered Longer-Term Loans

This section discusses the impacts of the provisions of the proposal that specifically relate to covered longer-term loans. These provisions include the requirement that lenders determine that applicants for these covered loans have the ability to repay the loan while still meeting their major financial obligations and paying basic living expenses proposed in § 1041.9, as well as the alternative approaches to making covered longer-term loans proposed in §§ 1041.11 and 1041.12. In this section, the practice of making loans after determining that the borrower has the ability to repay the loan will be referred to as the "ATR approach." The practice of making loans that share certain features of loans made pursuant to the NCUA PAL program, with certain additional restrictions, as described in the section-by-section analysis of proposed § 1041.11 will be referred to as the "PAL approach." The practice of making loans with a low portfolio default rate, and other restrictions, as described in the section-by-section analysis of proposed § 1041.12, will be referred to as the "Portfolio approach."

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[974] Susan Payne Carter & William Skimmyhorn, *Much Ado About Nothing: Evidence Suggests No Welfare Improvements from the Military Lending Act* (working paper, Mar. 27, 2015), *available at http://www.usma.edu/sosh/SiteAssets/Lists/Faculty Biographies/EditForm/carter-skimmyhorn-pdl-mar-2015.pdf.*

[975] Mary Zaki, *Access to Short-term Credit and Consumption Smoothing Within the Paycycle* (working paper Dec. 23, 2013), *available at http://arefiles.ucdavis.edu/uploads/filer_public/2014/03/27/zaki-access-to-short-term-credit.pdf.*

[976] Paige Skiba & Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* (working paper March 10, 2015), *available at http://assets.wharton.upenn.edu/~tobacman/papers/rd.pdf.*

[977] Neil Bhutta, Paige Marta Skiba, & Jeremy Tobacman, *Payday Loan Choices and Consequences,* 47 J. Money, Credit & Banking 223 (2014), *available at http://onlinelibrary.wiley.com/doi/10.1111/jmcb.12175/pdf.*

[978] Brian Baugh, What Happens When Payday Borrowers Are Cut Off From Payday Lending? A Natural Experiment (Aug. 2015) (Ph.D. dissertation, Ohio State University), *available at http://fisher.osu.edu/supplements/10/16174/Baugh.pdf.*

[979] Financial Conduct Authority, Technical Annexes Supplement to CP 14/10, Impact of the Cap on High Cost Short Term Credit Demand, at Technical Appendix 3 (July 2014), *available at https://www.fca.org.uk/static/documents/consultation-papers/cp-14-10-technical-annexes.pdf.*

[980] Jennifer Priestley, *Payday Loan Rollovers and Consumer Welfare* (Dec. 4, 2014), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534628.*

[981] The Priestley study also compared changes over time in credit scores of payday borrowers in different states, and attributed those differences to differences in the states' payday regulations. This ignores differences in who chooses to take out payday loans in different states, given both the regulatory and broader economic differences across states, and ignores the different changes over time in the broader economic conditions in different states.

[982] Ronald Mann, *Do Defaults on Payday Loans Matter?,* (working paper Dec. 2014), *available at http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2560005.*

The Bureau believes that most covered longer-term loans would be made using the ATR approach. The PAL approach and the Portfolio approach would allow some lenders to originate covered longer-term loans without undertaking all of the requirements of the ATR approach. The impacts of the ATR approach are discussed first. The impacts of the PAL approach and the Portfolio approach are then discussed; those impacts are primarily discussed relative to the impacts of the ATR approach.

As noted in part VI.B, the Bureau believes that these provisions would primarily affect vehicle title lenders, online lenders making high-cost loans, and storefront payday lenders who have entered the payday installment loan market. The provisions may also cover a portion of the loans made by consumer finance companies when those lenders obtain authorizations to withdraw payments directly from a borrower's account or vehicle security. In addition, some loans made by community banks or credit unions that are secured by a borrower's vehicle or repaid from the consumer's deposit account may be covered, along with many credit union PAL loans. The Bureau believes that the impacts of the proposal on different types of lenders would vary widely because their existing underwriting practices and business models vary widely. The following discussion primarily focusses on the impacts for lenders whose current operations would be most affected by the proposed rule, since both the benefits and costs to those lenders would likely be more substantial than for lenders whose practices are already more in line with the proposed rule.

1. Benefits and Costs of ATR Requirements

The proposed rule would impose a number of procedural requirements on lenders making covered longer-term loans using the ATR approach, as well as impose restrictions on the covered loans that could be made. In order to present a clear analysis of the benefits and costs of the proposal, this section first describes the benefits and costs of the proposal to lenders and then discusses the implications of the proposal for the overall markets for these products. The benefits and costs to consumers are then described.

(a). Benefits and Costs to Covered Persons

The benefits and costs of the procedural requirements are described first. The limitation on lending to borrowers who have demonstrated an inability to repay their outstanding loan is then discussed. The possible effects on loan volume from the requirement that loans only be made to borrowers who the lender determines have the ability to repay the loan are then discussed, along with the benefits and costs to lenders of this reduction. The section concludes with a discussion of the possibility that lenders would respond by modifying their loan terms or product mixes to either make it easier to originate loans under the rule or to avoid falling within the scope of the rule.

The proposed rule would require lenders to consult their own records and the records of their affiliates to determine whether the borrower had taken out any recent covered loans or non-covered bridge loan and, if so, the timing of those loans, as well as whether a borrower currently has an outstanding loan and has demonstrated difficulty repaying the loan. Lenders would be required to obtain a consumer report from a registered information system containing information about the consumer's borrowing history across lenders, if available, and would be required to furnish information regarding covered loans they originate to registered information systems. Lenders would also be required to obtain information and verification evidence about the amount and timing of borrowers' income and payments for major financial obligations, obtain a statement from applicants listing their income and payments on major financial obligations, and assess that information to determine whether a consumer has the ability to repay the loan. A lender could not make a covered loan to a borrower without making a reasonable determination that the borrower could repay the loan while still meeting major financial obligations and paying basic living expenses.

In addition, a consumer who has had a covered short-term loan or a covered longer-term balloon-payment loan outstanding within the past 30 days would need to demonstrate sufficient improvement in financial capacity to overcome a presumption of unaffordability for a new covered longer-term loan, unless the new loan would have substantially smaller payments. Similarly, a consumer that had outstanding a covered longer-term loan (other than a covered longer-term balloon-payment loan) or a non-covered loan that was made or is being serviced by the same lender or its affiliate and for which there was an indication that the consumer is in financial distress would need to demonstrate sufficient improvement in financial capacity to overcome a presumption of unaffordability before refinancing into a new covered longer-term loan, unless the new loan would have substantially smaller payments or substantially lower cost of credit. Documenting the improved financial capacity would impose procedural costs on lenders in some circumstances.

Each of the procedural costs associated with making a loan using the ATR approach would potentially be incurred for each loan application, and not just for loans that were originated. Lenders would likely avoid incurring the full set of costs on each application by establishing procedures to reject applicants who fail a screen based on a review of partial information. The Bureau expects that lenders would organize their underwriting process so that the more costly steps of the process are only taken for borrowers who satisfy other requirements. Many lenders currently use other screens when making loans, such as screens meant to identify potentially fraudulent applications. If lenders employ these screens prior to collecting all of the required information from borrowers, that would eliminate the cost of collecting additional information on those borrowers who fail those screens. But, in most cases lenders would incur some of these costs evaluating loan applications that do not result in an originated loan and in some cases lenders would incur all of these costs in evaluating loan applications that are eventually declined. Finally, lenders would be required to develop procedures to comply with each of these requirements and train their staff in those procedures.

The Bureau believes that many lenders use automated systems when underwriting loans and would modify those systems, or purchase upgrades to those systems, to incorporate many of the procedural requirements of the ATR approach. The costs of modifying such a system or purchasing an upgrade are discussed below, in the discussion of the costs of developing procedures, upgrading systems, and training staff.

As noted above, in the discussion of the benefits and costs to covered persons of the provision relating to covered short-term loans, a number of the proposed provisions concern activities that lenders could choose to engage in absent the proposal. The benefits to lenders of those provisions are discussed here, but to the extent that lenders do not voluntarily choose to engage in the activities, it is likely the case that the benefits, in the lenders' view, do not currently outweigh the costs.

Consulting Lender's Own Records

In order to consult its own records and those of any affiliates, a lender would need a system for recording loans that can be identified as being made to a particular consumer and a method of reliably accessing those records. The Bureau believes that lenders would most likely comply with this requirement by using computerized recordkeeping. A lender operating a single storefront would need a system of recording the loans made from that storefront and accessing those loans by consumer. A lender operating multiple storefronts or multiple affiliates would need a centralized set of records or a way of accessing the records of all of the storefronts or affiliates. A lender operating solely online would presumably maintain a single set of records; if it maintained multiple sets of records it would need a way to access each set of records.

The Bureau believes that most lenders making covered longer-term loans already have the ability to comply with this provision, with the possible exception of lenders with affiliates that are run as separate operations. Lenders' own business needs likely lead them to have this capacity. Lenders need to be able to track loans in order to service the loans. In addition, lenders need to track the borrowing and repayment behavior of individual consumers to reduce their lending risk, such as by avoiding lending to a consumer who has defaulted on a prior loan.

There may be some lenders, however, that currently do not have the capacity in place to comply with this requirement. Developing this capacity would enable them to better service the loans they originate and to better manage their lending risk, such as by tracking the loan performance of their borrowers.

Lenders that do not already have a records system in place would need to incur a one-time cost of developing such a system, which may require investment in information technology hardware and/or software. The Bureau estimates that purchasing necessary hardware and software would cost approximately $2,000, plus $1,000 for each additional storefront. For firms that already have standard personal computer hardware, but no electronic recordkeeping system, the Bureau estimates that the cost would be approximately $500 per storefront. Lenders may instead contract with a vendor to supply part or all of the systems and training needs.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically access the lender's own records. For lenders that access their records manually, rather than through an automated loan origination system, the Bureau estimates that doing so would take three minutes of an employee's time.

Accessing a Registered Information System

The Bureau believes that many lenders already work with firms that provide some of the information that would be included in the registered information system data for risk management purposes, such as fraud detection. The Bureau recognizes, however that there also is a sizable segment of lenders making covered longer-term loans that make lending decisions without obtaining any similar data.

Lenders would benefit from obtaining consumer reports from registered information systems through reduced fraud risk and reduced default risk. And, because the proposed rule would require much broader and detailed furnishing of information about loans that would be covered loans, all lenders would benefit from the requirement to obtain a consumer report from a registered information system because of the greater market coverage and more detailed information.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they automatically order a consumer report from a registered information system during the lending process. The costs of these systems are discussed below, in the discussion of developing procedures, upgrading systems, and training staff. For lenders that order reports manually, the Bureau estimates that it would take approximately three minutes for a lender to request a report from a registered information system. The Bureau expects that access to a registered information system would be priced on a "per-hit" basis, in which a hit is a report successfully returned in response to a request for information about a particular consumer at a particular point in time. The Bureau estimates that the cost per hit would be $0.50, based on pricing in existing specialty consumer reporting markets.

Furnishing Information to Registered Information Systems

Lenders making most covered longer-term loans would be required to furnish information about those loans to all information systems that have been registered with the Bureau for 120 days or more, have been provisionally registered with the Bureau for 120 days or more, or have subsequently become registered after being provisionally registered (generally referred to here as registered information systems). At loan consummation, the information furnished would need to include identifying information about the borrower, the type of loan, the loan consummation date, the principal amount borrowed or credit limit (for certain loans), and the payment due dates and amounts. While a loan is outstanding, lenders would need to furnish information about any update to information previously furnished pursuant to the rule within a reasonable period following the event prompting the update. And when a loan ceases to be an outstanding loan, lenders would need to furnish the date as of which the loan ceased to be outstanding, and the amount paid on the loan.

Furnishing data to registered information systems would benefit all lenders required to obtain consumer reports from such systems by improving the quality of information available to such lenders. This would allow lenders to better identify borrowers who pose relatively high default risk, and the richer information and more complete market coverage would make fraud detection more effective.

Furnishing information to registered information systems would require lenders to incur one-time and ongoing costs. These include costs associated with establishing a relationship with each registered information system, developing procedures for furnishing the loan data, and developing procedures to comply with applicable laws. Lenders using automated loan origination systems would likely modify those systems, or purchase upgrades to those systems, to incorporate the ability to furnish the required information to registered information systems. The costs of these systems are discussed below, in the discussion of developing procedures, upgrading systems, and training staff.

The ongoing costs would be the costs of actually furnishing the data. Lenders with automated loan origination and servicing systems with the capacity of furnishing the required data would have very low ongoing costs. For example, lenders or vendors may develop systems that would automatically transmit loan data to registered information systems. Some software vendors that serve lenders that make payday and other loans have developed enhancements to enable these lenders to report loan information automatically to existing State reporting systems; similar enhancements could automate reporting to one or more registered information systems. Lenders that report information manually would likely do so through a web-based form, which the Bureau estimates would take five to 10 minutes to fill out for each loan at the time of consummation, when information is updated (as applicable), and when the loan ceases to be an outstanding loan. Assuming that multiple registered information systems existed, it might be necessary to incur this cost multiple times, if data are not shared across systems. As discussed above, the Bureau would encourage the development of common data standards for registered information systems when possible to reduce the costs of providing data to multiple systems.

Obtaining Information And Verification Evidence about Income and Major Financial Obligations

Lenders making loans under the ATR approach would be required to obtain information and verification evidence about the amount and timing of an applicant's income and payments for major financial obligations, obtain a statement from applicants of their income and required payments for major financial obligations, and assess that information to determine whether a consumer has the ability to repay the loan.

The benefit to lenders of collecting information and verification evidence comes from using that information and evidence in the ATR determination, which is discussed in a subsequent section.

There are two types of costs entailed in making an ATR determination: The cost of obtaining the verification evidence and the cost of making an ATR assessment consistent with that evidence, which is discussed separately below. The impact on lenders with respect to applicants found to lack ATR and thus denied a loan is also discussed separately.

As noted above, many lenders already use automated systems when originating loans. These lenders would likely modify those systems or purchase upgrades to those systems to automate many of the tasks that would be required by the proposal.

Lenders originating covered longer-term loans would be required to obtain information and verification evidence on the amount and timing of an applicant's income for all such loans. The Bureau understands that the underwriting practices of lenders that originate loans that would be covered longer-term loans vary substantially. The Bureau believes that many lenders that make covered longer-term loans, such as payday installment lenders, already obtain some information and verification evidence about consumers' incomes, but that others, such as some vehicle title lenders or some lenders operating online, do not do so for some or all of the loans they originate. And, some lenders, such as storefront consumer finance installment lenders who make some covered longer term loans and some newer entrants, have underwriting practices that may satisfy, or satisfy with minor changes such as obtaining housing cost estimates, the requirements of the proposed rule. Other lenders, however, do not collect information or verification evidence on applicants' major financial obligations or determine consumers' ability to repay a loan in the manner contemplated by the proposal.

Lenders would be required to obtain a consumer report from a national consumer reporting agency to verify applicants' required payments under debt obligations. This would be in addition to the cost of obtaining a consumer report from a registered information system. Verification evidence for housing costs may be included on an applicant's consumer report, if the applicant has a mortgage; otherwise, such evidence could consist of documentation of rent or an estimate of a consumer's housing expense based on the housing expenses of similarly situated consumers with households in their area. The Bureau believes that most lenders would purchase reports from specialty consumer reporting agencies that would contain both debt information from a national consumer reporting agency and housing expense estimates. Based on industry outreach, the Bureau believes these reports would cost approximately $2.00 for small lenders and $0.55 for larger lenders. As with the ordering of reports from registered information systems, the Bureau believes that many lenders would modify their automated loan origination system, or purchase an upgrade to the system to enable the system to automatically order a specialty consumer report during the lending process. For lenders that order reports manually, the Bureau estimates that it would take approximately two minutes for a lender to request a report.

Lenders that do not currently collect income or verification evidence for income would need to do so. For lenders that use a manual process, for consumers who have straightforward documentation for income and provide documentation for housing expenses, rather than relying on housing cost estimates, the Bureau estimates that gathering and reviewing information and verification evidence for income and major financial obligations would take roughly three to five minutes per application.

Some consumers may visit a lender's storefront without the required documentation and may have income for which verification evidence cannot be obtained electronically, raising lenders' costs and potentially leading to some consumers failing to complete the loan application process, reducing lender revenue.

Lenders making loans online may face particular challenges obtaining verification evidence, especially for income. It may be feasible for online lenders to obtain scanned or photographed documents. And services that use other sources of information, such as checking account or payroll records, may mitigate the need for lenders to obtain verification evidence directly from consumers.

Making Ability-to-Repay Determination

Once information and verification evidence on income and major financial obligations has been obtained, the lender would need to make a reasonable determination whether the consumer has the ability to repay the contemplated loan. In addition to considering the information collected about income and major financial obligations, lenders would need to estimate an amount that borrowers generally need for basic living expenses. They may do this in a number of ways, including, for example, collecting information directly from applicants, using available estimates published by third parties, or providing for a "cushion" calculated as a percentage of income. The time it takes to complete this review would depend on the method used by the lender. Making the determination would be essentially instantaneous for lenders using automated systems; the Bureau estimates that this would take roughly 10 additional minutes for lenders that use a manual process to make these calculations.

Total Procedural Costs of the ATR Approach

In total, the Bureau estimates that obtaining information and verification evidence about consumers' income and major financial obligations and arriving at a reasonable ATR determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system, with total costs dependent on the existing utilization rates of and wages paid to staff that would spend time carrying out this work. Dollar costs would include a report from a registered information system costing $0.50 and a specialty consumer report containing housing cost estimates costing between $0.55 and $2.00, depending on lender size; lenders relying on electronic services to gather verification information about income would face an additional small cost.

Documenting Improved Financial Capacity

Lenders would not be able to make a covered longer-term loan during the term of and for 30 days following a prior covered short-term loan or covered longer term balloon-payment loan unless the borrower's financial capacity has sufficiently improved or payments on the new loan would be substantially smaller than payments on the prior loan. This situation is unlikely to occur frequently, as a covered longer-term loan would normally have payments that are substantially smaller than the payment for a covered short-term loan or the balloon payment of a covered longer-term balloon-payment loan. It could arise, however, if the new loan were for a substantially larger amount than the prior loan, or if the new loan had only a slightly longer term than the prior loan (for example, a 46-day three-payment loan following a 45-day three-payment loan).

A similar limitation would apply in cases in which a consumer has indicated difficulty in repaying other types of covered or non-covered loans to the same lender or its affiliates. Unless the payments on the new loan would be substantially smaller than payment on the prior loan or the new loan would substantially lower the cost of credit, the consumer would be presumed not to be able to afford the new loan unless the lender concluded that the borrower's financial capacity had improved sufficiently in the preceding 30 days. The improvement in financial capacity would need to be documented using the same general kinds of verification evidence that lenders would be need to collect as part of the underlying assessment of the consumer's ability to repay. When making a loan using the ATR approach, a lender would need to project the borrower's residual income, and therefore that aspect of this requirement would impose no additional cost on the lender. Comparing the borrower's projected financial capacity for the new loan with the consumer's financial capacity since obtaining the prior loan (or during the prior 30 days for an unaffordable outstanding loan) would impose very little cost, as long as the same lender had made the prior loan. If the lender did not make the prior loan, or if the borrower's financial capacity would be better for the new loan because of an unanticipated dip in income since obtaining the prior loan (or during the prior 30 days), the lender would need to collect additional documentation to overcome the presumption of unaffordability.

Developing Procedures, Upgrading Systems, and Training Staff

Lenders would need to develop procedures to comply with the requirements of the ATR approach and train their staff in those procedures. Many of these requirements would not appear qualitatively different from many practices that most lenders already engage in, such as gathering information and documents from borrowers and ordering various types of consumer reports.

Developing procedures to make a reasonable determination that a borrower has an ability to repay a loan without reborrowing and while paying for major financial obligations and basic living expenses is likely to be a greater challenge for many lenders. The Bureau expects that vendors, law firms, and trade associations are likely to offer both products and guidance to lenders, lowering the cost of developing procedures. Lenders would also need to develop a process for estimating borrowers' basic living expenses. Some lenders may rely on vendors that provide services to determine ability to repay that include estimates of basic living expenses. For a lender to conduct an independent analysis to determine reliable statistical estimate of basic living expenses would be quite costly. There are a number of online services, however, that provide living expense estimates that lenders may be able to use to obtain estimates or to confirm the reasonableness of information provided by loan applicants.

As noted above, the Bureau believes that many lenders use automated systems when originating loans and would incorporate many of the procedural requirements of the ATR approach into those systems. This would likely include an automated system to make the ability-to-repay determination; subtracting the component expense elements from income itself is quite straightforward and would not require substantial development costs. The Bureau believes that large lenders rely on proprietary loan origination systems, and estimates the one-time programming cost for large respondents to update their systems to carry out the various functions to be 1,000 hours per entity.[983] The Bureau believes small lenders that use automated loan origination systems rely on licensed software. Depending on the nature of the software license agreement, the Bureau estimates that the one-time cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on the entity-level licenses.

The Bureau estimates that lender personnel engaging in making loans would require approximately five hours of initial training in carrying out the tasks described in this section and 2.5 hours of periodic ongoing training per year.

Impacts of ATR Requirement on Loan Volume and Revenues

As noted above, the Bureau believes that most covered longer-term loans would be originated under the ATR approach, as many current loan products that would be covered longer-term loans would not readily qualify for either the Portfolio or PAL approach.

The proposed rule would prevent lenders from making loans to borrowers whom the lender could not determine had the ability to repay the loan. This restriction would reduce the total number of covered loans that could be originated and lower the average risk of default of the loans that could be originated. Each of these effects would have benefits and costs for lenders.

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[983] In the PRA analysis prepared by the Bureau, the burden hours estimated to modify loan origination systems is 500. This is because only part of the systems modifications are for functions related to information collections covered by the PRA. *See* Bureau of Consumer Financial Protection Paperwork Reduction Act Information Collection Request, Supporting Statement Part A, Payday, Vehicle Title and Installment Loans (12 CFR part 1041).

The set of covered longer-term loans is quite diverse. The Bureau believes that the share of current borrowers taking out covered longer-term loans who could demonstrate the ability to repay the loan varies considerably across this diverse range of products. The impacts of the ATR requirement in the proposed rule would, therefore, vary considerably across these products. The discussion presented here is for installment vehicle title loans and installment payday loans originated either through storefronts or online.

As discussed in part VI.F.1(c), estimating the share of borrowers who would be likely to demonstrate an ability to repay the loan is very challenging. The same limitations apply to this discussion, with the further complication that lenders making covered longer-term loans would need to provide for a greater cushion when evaluating borrowers' ability to repay, given the greater uncertainty about borrowers' incomes and expenses over a longer loan term.

TABLE 6—DISTRIBUTION OF INDIVIDUAL MONTHLY INCOME BY INSTALLMENT LOAN TYPE

Individual monthly income	Vehicle title	Payday installment (all)	Payday installment (online only)[a]
$0-$499	3.2%	0.2%	0.0%
$500-$999	15.7	3.3	0.3
$1000-$1499	21.6	8.3	1.8
$1500-$1999	19.4	13.2	5.0
$2000-$2499	12.6	13.0	10.0
$2500-$2999	8.2	12.8	12.5
$3000-$3499	6.3	10.8	13.6
$3500-$3999	3.2	8.3	9.6
$4000-$4999	4.2	11.8	16.6
$5000-$5999	2.2	7.4	10.4
$6000-$6999	1.3	4.7	6.9
$7000-$7999	0.6	2.5	3.8
$8000-$8999	0.5	1.6	2.3
$9000-$9999	1.0	1.0	1.5
$10,000+[b]	....	3.0	3.5

Source: CFPB analysis of loan-level data.

[a] Represents only those loans for which the Bureau was able to identify the origination channel as being online.

[b] Data does not contain vehicle title installment loan borrowers with reported individual monthly incomes in this range.

Table 6 shows the distribution of borrowers' individual monthly incomes reported in the data the Bureau has analyzed for vehicle title installment loans, payday installment loans, and payday installment loans originated online.[984] It shows that the incomes of installment vehicle title borrowers are quite low, with more than half of borrowers having monthly incomes below $2,000. Comparing the income distribution of installment vehicle title borrowers with that of single-payment vehicle-title borrowers shows that they are nearly identical.[985] Likewise, the average amount borrowed is quite similar for installment and single-payment auto-title loans, with median loan size of $710[986] and $694,[987] respectively. The main distinction between the two types of loans is in the typical term, and therefore the size of the payments. For single-payment loans, the median amount required to pay off the loan in full is $798.[988] In contrast, the median monthly payment for vehicle title installment loans is $230,[989] as the term of an auto-title installment loan can range anywhere from 2.5 months to several years in duration. Payments are due bi-weekly, or more commonly, due monthly.[990] Accordingly, larger numbers of consumers may be able to afford an installment payment as compared to a single-payment loan for roughly the same amount.

Table 2, in part VI.F.1(c), shows the relationship between individual income and household income for borrowers who are likely to be in this market, and Table 3 shows remaining income for households with different levels of monthly income.[991] Table 3 shows that most borrowers would appear to need at least $1,500 in household income to be able to demonstrate an ability to make a $230 monthly payment. A more likely scenario is that they would actually need $2,500 or $3,000 in household income to support such payments, given the additional major financial obligations borrowers may have, other basic living expenses not included in these calculations, and the need to provide an additional cushion on covered longer-term loans. Table 2 shows that household income of $3,000 would translate into individual income of roughly $2,500, and Table 6 shows that approximately one third of vehicle title borrowers have individual incomes of at least that amount. Based on these results, the Bureau believes that the fraction of auto-title installment borrowers who would demonstrate an ability to repay would be similar to that of payday borrowers and somewhat higher than that of single-payment vehicle title borrowers.[992]

The Bureau also considered the share of payday installment loans, originated through any channel, that were likely to support a reasonable determination that the consumer could repay the loan. Table 6 shows that these borrowers are generally higher income than vehicle title installment loan borrowers (or single-payment vehicle title loan borrowers). The typical amount borrowed for a payday installment loan is higher than for vehicle title installment loans, with a median loan size of $1,000.[993] The median monthly payment is only slightly higher than for vehicle title installment loans at $304,[994] suggesting borrowers would need a similar household income to be able to demonstrate an ability to repay both types of loans. Given the substantially higher average incomes of payday installment borrowers, as seen in Table 6, it appears that a majority would be able to demonstrate an ability to repay a typical payday installment loan.

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[984] *See CFPB Report on Supplemental Findings,* at ch. 1, for additional information about these data. For a portion of the loans in the data, the origination channel is unknown. These loans are included in the column labeled "Payday Installment (All)".

[985] *See* Table 1.

[986] *CFPB Report on Supplemental Findings,* at 13.

[987] *CFPB Single-Payment Vehicle Title Lending,* at 7.

[988] Bureau calculations based on data described in *CFPB Single-Payment Vehicle Title Lending.*

[989] *See CFPB Report on Supplemental Findings,* at 11.

[990] *See id.,* at ch. 1.

[991] *See* part VI.F.1 for a discussion of the sources of data and derivation of these tables.

[992] *See* discussion of the share of payday borrowers and single-payment vehicle title borrowers in part VI.F.1(c).

Table 6 shows that borrowers taking out loans online have higher incomes, on average, than payday installment borrowers overall.[995] These loans are also substantially larger, with a median loan size of $2,400,[996] and average monthly payments of $580.[997] An individual borrower may need $3,000 in monthly income for household income to be sufficient to make such a payment. More than two-thirds of the online installment borrowers in the Bureau's data have individual incomes at least that high.

Taken together, these results suggest that borrowers who currently take out payday installment loans are more likely to demonstrate an ability to repay the loans than are borrowers who take out vehicle title loans, or any short-term loans, and this result is stronger for borrowers taking out loans online.

As discussed above, in part VI.F.1(c), there is an additional important caveat to this analysis. The CEX expenditure data is for all households in a given income range, not households taking out vehicle title or payday installment loans. If these borrowers have unusually high expenses, relative to their incomes, they would be less likely than the data here suggest to be able to demonstrate an ability to repay a loan. Conversely, if borrowers have unusually low expenses, relative to their incomes, they would be more likely to be able to borrower under the ATR approach. Given the borrowers' need for liquidity, however, it is more likely that they have greater expenses relative to their income compared with households generally. This may be particularly true around the time that borrowers take out a loan, as this may be a time of unusually high expenses or low income.

As noted above, the proposal would also impose a presumption of unaffordability in which a consumer seeks to take out a covered longer-term loan within 30 days of a previous outstanding covered short-term loan or a covered longer-term balloon-payment loan, as well as when a consumer seeks to refinance some other covered loan or non-covered loan with the same lender or its affiliates under circumstances indicating that the consumer may be under financial distress. The presumptions would not apply in circumstances in which the new loans would substantially reduce the cost of credit or payment size, and could be rebutted by evidence of an improvement in the consumer's financial capacity in the last 30 days. The Bureau cannot model the impacts of the presumptions precisely. However, it believes that these proposals would have more modest impacts on the volume of covered longer-term loans overall than the basic ability-to-repay requirements, though they could be more substantial as applied specifically to longer-term balloon payment loans in which there is evidence of substantial reborrowing activity.

Overall, the reduction in loan volume from the proposed rules would benefit lenders to the extent that it would substantially reduce their costs associated with default, including credit losses and the costs of collections. Cash-flow analyses similar to the residual income analysis that would be required under the proposed rule are common for some types of storefront installment lenders, indicating that they find this approach effective at reducing credit losses. Calculations of debt-to-income ratios are likewise common among lenders in a variety of other consumer credit markets, such as mortgages and credit cards. And, recent entrants making loans that would be covered longer-term loans use various sources of income and expense data to conduct similar analyses.

While the Bureau does not have information on the default rates of borrowers who would or would not demonstrate an ability to repay a loan, the Bureau has published an analysis of the default rates of borrowers with different PTI ratios on their loans. In its analysis, the Bureau found that, for most of the products studied, borrowers with a higher PTI ratio were more likely to default on their loans than were borrowers with a lower PTI ratio.[998] Similarly, an analysis of the same set of loans by researchers with access to a more complete set of information about the loans found higher PTI ratios to be associated with higher risks of default.[999] This suggests that a more refined evaluation that included information on borrower's payments on other major financial obligations and living expenses would provide information about the risk of a borrower defaulting on the loan.

A third analysis focusing on online installment loans, by a research group affiliated with a specialty consumer reporting agency, also shows a relationship between PTI and the overall default rate.[1000] That report found that the relationship was substantially mitigated or eliminated if loans for which the borrower never made a payment ("first-payment defaults") were excluded from the analysis. In contrast, in the online installment loan data analyzed by the Bureau, while first-payment defaults are common, the relationship between PTI ratio and default remained after eliminating the loans for which a payment was never made from the analysis.[1001] Another analysis by the research group affiliated with a specialty consumer reporting agency found that a residual income model was "proven predictive of loan performance."[1002]

The reduced loan volume that would result when lenders could not make a reasonable determination that some borrowers did not have the ability to repay the loan would be a cost to lenders. The magnitude of this cost would vary across lenders; it would appear, based on the analysis presented above, to be greatest for vehicle title installment lenders, who currently make loans to borrowers with substantially lower income than lenders making payday installment loans.

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[993] *CFPB Report on Supplemental Findings,* at 13.

[994] *Id.,* at 12.

[995] The distribution of income in the online-only data analyzed by the Bureau is substantially higher than that reported by nonPrime 101 using data from Clarity Services, a specialty consumer reporting agency serving the online lending industry. nonPrime 101 has conducted its own analysis of potential impacts of an ATR requirement and found the qualitatively similar result that installment borrowers would be more likely to demonstrate an ability to repay the loan than would payday borrowers. nonPrime 101, "Using Supply Side Data, Consumption Pattern Data and Consumer Characteristics to Model Effects of Regulation and Suggest Industry Responses," presented at nonPrime101 Conference 2015, Aug. 4-5, 2015. *See also* nonPrime 101, *Report 1: Profiling Internet Small-Dollar Lending,* at Fig. 3 (July 15, 2014), *available at https://www.nonprime101.com/wp-content/uploads/2013/10/Clarity-Services-Profiling-Internet-Small-Dollar-Lending-0717141.pdf.*

[996] *CFPB Report on Supplemental Findings,* at 13.

[997] *Id.,* at 12.

[998] *Id.,* at ch. 1.

[999] Howard Beales & Anand Goel, *Small Dollar Installment Loans: An Empirical Analysis,* at Table 1 (March 20, 2015), *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581667.*

[1000] nonPrime 101, *Report 6: The CFPB Five Percent Solution: Analysis of the Relationship of Payment-to-Income Ratio to Defaults in Online Installment Loans* (Sept. 10, 2015), *https://www.nonprime101.com/wp-content/uploads/2015/09/Report-6-The-CFPB-5-Percent-Solution1.pdf*

[1001] *CFPB Report on Supplemental Findings,* at 24 n.31.

[1002] nonPrime 101, *Report 8: Can Storefront Payday Borrowers Become Installment Loan Borrowers?* (Dec. 2, 2015), *https://www.nonprime101.com/wp-content/uploads/2015/12/Report-8-Can-Storefront-Payday-Borrowers-Become-Installment-Loan-Borrowers-Web-61.pdf.*

The Bureau does not expect the same level of consolidation of lenders making covered longer-term loans as it does for payday and single-payment vehicle title lenders. Lenders making vehicle title installment loans may face challenges in determining that applicants have the ability to repay a loan that are similar to those faced by payday lenders, based on the discussions presented above. These lenders would not, however, face revenue impacts from limitations on rolling over loans, or permitting reborrowing, in the same way lenders making covered short-term loans would. And, given that installment products have a wider range of possible loan structures, it may be more feasible for these lenders to adjust the terms of the loans such that they are able to determine that applicants have the ability to repay the loan.

Possible Lender Response—Modifying Loan Terms To Satisfy ATR Requirement

When presented with a borrower who does not demonstrate an ability to repay the loan for which the borrower has applied, a lender may respond by changing the terms of the loan such that the borrower is able to demonstrate an ability to repay the loan. This could possibly be achieved through some combination of reducing the size of the loan, lowering the cost of the loan, or extending the term of the loan. The latter approach could, however, require the lender to build in a larger cushion to account for the increased risk of income volatility. *See* the section-by-section analysis of proposed § 1041.9(b).

Lenders may benefit from changes that make loan payments more manageable in the form of reduced defaults on the loans. Lowering the price of the loans may also attract additional borrowers. Extending the term of a loan may increase lender revenue, holding constant repayment. Lenders would, however, receive less revenue per loan if they reduced the loan size or the price of a loan. And, extending the term of a loan or offering only a smaller loan may make the loan less attractive to a borrower and therefore make a borrower less willing to take the loan. Extending the term of a loan may reduce the risk of default because of the lower payment, but there may be an off-setting effect of a greater risk that a borrower would experience a negative shock to income or expenses during the term of the loan, resulting in default. That risk may be mitigated to the extent the lender adjusts the cushion used in assessing the consumer's ability to repay.

Possible Lender Response—Lowering the Total Cost of Credit To Avoid Coverage

Longer-term loans are not covered loans if the total cost of credit of the loan is below 36 percent. Many of the products that would be covered by the proposed rule have a total cost of credit that far exceed 36 percent, and lenders making these loans would presumably not cut the price of the loans so dramatically, or make other changes to the structure of the loan that would affect the total cost of credit, to make them non-covered loans. Some lenders, however, make loans that are only slightly above the 36 percent coverage threshold. For example, a community bank might make a loan with a low interest rate but a relatively high origination fee (compared to the amount of the loan) and a short repayment term. Such a loan can exceed 36 percent total cost of credit. Lenders making these loans may choose to reduce the origination fee, or set a minimum loan size or minimum term, to bring the total cost of credit below 36 percent. Some lenders sell add-on products that are included in the total cost of credit calculation unless the products are only sold at least 72 hours after the proceeds of the loan are disbursed. Lenders may defer the sale of these products until after the loan has been originated if doing so would bring the total cost of credit below 36 percent.

Lowering the total cost of credit would reduce lender revenue. It may also attract additional borrowers, who may be of lower risk than the lenders' current borrowers, and may also reduce the credit risk posed by existing borrowers taking out loans as they are currently structured.

Possible Lender Response—Forgoing Account Access or Vehicle Security Interest

Longer-term loans are also not covered loans if they do not include either the ability to obtain payment directly from a borrower's account or a non-purchase security interest in an automobile. Some lenders may choose to eliminate these terms of their loans so that they would not be covered loans. Lenders that specialize in making vehicle title loans with very high costs and very high default rates, such as those the Bureau analyzed for its report,[1003] are unlikely to make similar loans without taking a security interest in a vehicle title. Some lenders, however, such as some community banks, take a vehicle security interest for loans that are much lower cost and have much lower rates of default, and these lenders do not normally exercise their security interest in the case of default. These lenders might, in some cases, decide to continue to make these loans, or make similar loans that otherwise pose lower credit risk, such as loans for smaller amounts, without taking the security interest in a vehicle. Similarly, for some lenders, such as online lenders, the ability to process payments through an ACH payment request or other electronic payment method is very important to their business model. For other lenders it may be that the ability to submit ACH payment requests or present post-dated checks provides some benefit in the form of reduced defaults and more effective collections, but is not essential. These lenders may decide to forgo ACH authorizations, post-dated checks, or other leveraged payment mechanisms when originating the loan, rather than make covered longer-term loans.

Relinquishing access to the borrower's account, or not requiring a security interest in a vehicle as a condition of a loan could result in a lender experiencing higher credit losses. Lenders may also experience higher processing costs if they forgo electronic payments, and have higher servicing and collections costs if borrowers' payments are not made automatically. These changes, however, may attract borrowers who would not take loans with those features, although these borrowers may be of higher risk. It may also allow lenders to avoid certain procedural costs, such as inspecting vehicles.

(b). Benefits and Costs to Consumers

Requirement to Determine ATR

Benefits

The proposal would benefit consumers by reducing the harm they suffer from the costs of delinquency and default on longer-term loans, from the costs of defaulting on other major financial obligations or being unable to cover basic living expenses in order to pay off covered longer-term loans, and from reducing the harms from reborrowing on longer-term balloon payment loans.

The Bureau believes that the ATR requirements would lead to borrowers who take out covered longer-term loans to experience substantially fewer defaults. Currently, defaults are very common on many types of loans that would be covered longer-term loans.

[1003] *CFPB Report on Supplemental Findings,* at ch 1.

The Bureau has analyzed data on numerous loan products from seven lenders that were originated both online and through storefronts and published the results of that analysis.[1004] The overall default rate across all of the longer-term payday installment loan products is 24 percent.[1005] The default rate on payday installment loans originated online is much higher, at 41 percent, while for payday installment loans originated through storefronts that rate is 17 percent.[1006] The Bureau also analyzed sequences of loans, which include, in addition to initial loans, refinancings or loans taken out within 30 days of the repayment of a prior loan. The sequence default rate is 38 percent overall, 55 percent for loans originated online, and 34 percent for loans originated in storefronts.[1007] For loans originated through either channel, approximately 20 percent of loans that defaulted had no payments made; for 80 percent of defaults the lender was repaid at least in part before the borrower defaulted.[1008]

The Bureau also found very high rates of default on installment vehicle title loans. The Bureau found a default rate on these loans of 22 percent.[1009] When measured at the sequence level, in which a sequence includes refinancings or loans that borrowers took out within 30 days of paying off a prior loan, 31 percent of loan sequences ultimately lead to a default.[1010] The share of defaults in which the borrower made no payments prior to defaulting is higher on vehicle title loans, with 32 percent of defaults having no payments made.[1011]

The Bureau believes that the proposed requirements for lenders using the ATR approach to originate covered longer-term loans would reduce the harms borrowers suffer when they obtain loans with payments that exceed their ability to repay. Such borrowers are likely to fall behind in making payments and experience harms such as bank and lender fees imposed when checks bounce or ACH payments are returned unpaid. Many of these borrowers end up defaulting and experience the harms from default, which are discussed in greater detail in Market Concerns-Longer-Term Loans and include not only bank and lender fees imposed when checks bounce or ACH payments are returned unpaid, but also aggressive collections practices, and, in the case of vehicle title loans, loss of a vehicle to repossession. Borrowers whom lenders determine would have sufficient residual income to cover each loan payment and still meet basic living expenses over the term of the loan would likely pose a substantially lower risk of default than the average risk of borrowers who currently take out these loans. The evidence on the relationship between PTI ratio and default, and how it is informative about the effectiveness of an ATR assessment, is discussed above in part VI.F.1(a).

The Bureau also believes that the proposed requirements for lenders using the ATR approach to originate covered longer-term loans would reduce collateral harms borrowers sometimes suffer from making unaffordable payments. These may arise because the borrowers feel compelled to forgo other major financial obligations or basic living expenses to avoid defaulting on covered longer-term loans. If a lender has taken a security interest in the borrower's vehicle, for instance, the borrower may feel forced to prioritize the covered loan above other obligations because of the leverage that the threat of repossession gives to the lender. And, if a lender has the ability to withdraw payment directly from a borrower's checking account, especially when the lender is able to time the withdrawal to the borrower's payday, the borrower may lose control over the order in which payments are made and may be unable to choose to make essential expenditures before repaying the loan.

The ATR requirements would also reduce the harm that consumers suffer from covered longer-term loans with balloon payments. As discussed in Market Concerns—Longer-Term Loans, the Bureau has seen evidence that covered longer-term loans with balloon payments have higher default rates than similar loans without balloon payments and that borrowers appear to refinance these loans, or reborrow shortly after the time the balloon is due, in order to cover the balloon payment. Requiring lenders to determine that a borrow has the ability to repay a balloon payment would reduce the harm from default and the likelihood of extended sequences of loans due to refinancings caused by the difficulty of making the balloon payment.

Costs to Consumers and Costs and Impacts on Availability of Credit—Procedural Requirements

The procedural requirements for lenders would impose some costs directly on consumers by making the process of obtaining a loan more time consuming for some borrowers. This would depend largely on the extent to which lenders automate their lending processes. Borrowers taking out covered longer-term loans from lenders that automate the process of checking their records and obtaining a report from a registered information system would see very little increase in the time to obtain a loan.

Some borrowers taking out loans from lenders using the ATR approach are likely to experience some additional complexity. Storefront borrowers may be required to provide more income documentation than is currently required (for example, documentation of income for more than one pay period) and may also be required to document their rental expenses. Online borrowers and vehicle title borrowers would be required to provide documentation of their income, which is often not required, today, and also may be required to document their housing expense. All of these borrowers would be asked to fill out a form listing their income and payments on major financial obligations. If the lender orders reports manually and performs the calculations by hand necessary to determine that the borrower has the ability to repay the loan, this could add 20 minutes to the borrowing process. And, if a borrower is unaware that it is necessary to provide certain documentation required by the lender, this may require a second trip to the lender. Finally, borrowers taking out loans online may need to upload verification evidence, such as by taking a photograph of a pay stub, or facilitate lender access to other information sources.

The proposals could also increase the cost of credit to the extent that lenders pass through the procedural costs from complying with the proposed rule. As described above, however, these requirements would likely lead to reduced costs from credit losses, which may mitigate some of the procedural costs. And, many States impose caps on the costs of credit that would limit, at least partially, the ability of lenders to pass through cost increases to consumers.

[1004] *Id.*, at ch 1.

[1005] *Id.*, at 22. "Default" is defined in this analysis as the loan being charged-off by the lender. The Bureau did not have origination channel information available for all loans included in the calculations of the "overall" default rate; those loans are excluded from the "storefront" and "online" default rate calculations.

[1006] *Id.*

[1007] *Id.*

[1008] An analysis by NonPrime 101 of online installment loans also found loan-level default rates similar to those seen in the data analyzed by the Bureau, even after excluding lenders with extremely high default rates. NonPrime 101, *Report 6: The CFPB Five Percent Solution: Analysis of the Relationship of Payment-to-Income Ratio to Defaults in Online Installment Loans* (Sept. 10, 2015), *https://www.nonprime101.com/wp-content/uploads/2015/09/Report-6-The-CFPB-5-Percent-Solution1.pdf.*

[1009] *CFPB Report on Supplemental Findings,* at 22. For vehicle title loans, default is measured as the loan being charged off and/or the vehicle being repossessed.

[1010] *Id.*

[1011] *Id.*

Costs to Consumers and Impacts on Availability of Credit—Prohibition on Lending to Borrowers Whom the Lender Does Not Determine To Have the Ability To Repay the Loan

The restrictions on lending included in the proposal would reduce the availability of payday installment and vehicle title installment loans to some consumers. Borrowers would have less access to credit if they cannot demonstrate an ability to repay a loan of the size they desire on terms (*e.g.*, price and duration) that are mutually acceptable to the lender and the consumer. Some borrowers might still be able to borrow, but for smaller amounts or with different loan structures, and find this less preferable than the terms they would receive absent the proposal.

Some borrowers who would be unable to take out loans would bear some costs from this reduced access to credit. They may be forced to forgo certain purchases or delay paying existing obligations, such as paying bills late, or may choose to borrow from sources that are more expensive or otherwise less desirable. Some borrowers may overdraft their checking account; depending on the amount borrowed, overdrafting on a checking account may be more expensive than taking out a payday or single-payment vehicle title loan. Similarly, "borrowing" by paying a bill late may lead to late fees or other negative consequences like the loss of utility service. Other consumers may turn to friends or family when they would rather borrow from a lender. And, some consumers may take out online loans from lenders that do not comply with the proposed regulation.

As discussed above, the Bureau does not anticipate the same level of consolidation in the market for covered longer-term loans that is likely to occur in the market for covered short-term loans.

Restrictions on Reborrowing

Although more limited than with regard to covered short-term loans, the proposal would impose certain restrictions when there is reason to believe that the consumer may be trapped in a cycle of reborrowing or is otherwise in financial distress. Specifically, lenders would not be able to make a covered longer-term loan with similar payments to a consumer within 30 days of the consumer having a covered short-term loan or covered longer-term balloon-payment loan outstanding unless there is reliable evidence that the consumer's financial capacity has improved sufficiently to support a reasonable determination of ability to repay. A similar presumption would apply when a consumer seeks a new loan from the same lender in circumstances that tend to indicate the consumer is struggling to repay the earlier loan, including refinancings that provide no new funds or new funds that are less than the payments due within 30 days.

These provisions would prevent borrowers from incurring the costs associated with taking out another covered loan which they are unlikely to have the ability to repay. They would also reinforce lenders' obligation to ensure that borrowers taking out covered loans can afford them, as the lenders would be less able to use a covered longer-term loan to continue to lend to a borrower who may otherwise default on the loan. The limitations on refinancing may benefit consumers by causing the lender and the borrower to take steps to resolve the problem rather than have the borrower incur additional costs by continuing to borrow from the lender. The borrower could also benefit if the lender were to make a new covered longer-term loan with substantially smaller payments than the prior loan.

The limitation on refinancing loans when the borrower has had difficulty repaying the loan, or on refinancings that provide borrowers with little or no new funds, may harm borrowers who are having temporary financial problems but would be able to successfully repay the new loan. There may be some borrowers who would benefit from additional cash out from a refinancing, or who benefit from small additional time before the next payment is due that a refinancing may provide.

Offering Different Loan Terms To Satisfy ATR Requirement

Borrowers would benefit when a lender changes the terms of the loan offered to the borrower so as to make the loan one that the borrower can afford to repay by the reduced likelihood that the borrower would suffer the costs associated with default or the collateral costs of making unaffordable payments. For covered longer-term balloon-payment loans in particular, lenders may respond to the ATR requirement by offering a loan with a balloon payment that is affordable or offering instead a loan with no balloon payment. This may benefit borrowers by making less likely unanticipated refinancing or reborrowing at the time the balloon is due.

Lenders may modify a loan to make it possible for a borrower to satisfy the ATR requirement by extending the term or making a smaller loan. If the term is extended and the borrower could have actually afforded the higher payments associated with a shorter term, the borrower may have a higher total cost of borrowing. Note, however, that absent a prepayment penalty a borrower could still choose to make the higher payments and retire the debt more quickly. If a lender offers a borrower a smaller loan so as to satisfy the ATR requirement, a borrower may be made worse off if the borrower could have afforded the payments associated with the larger loan, but is unable to access a larger amount of credit because of the ATR requirement.

Modifying Loan Terms To Avoid Coverage

If a lender lowers the cost of a loan to avoid coverage by the proposed rule, this would benefit borrowers that are able to obtain the loan at the lower cost. Similarly, if a lender forgoes the security interest in a borrower's vehicle, a borrower able to obtain the loan on otherwise identical terms would benefit from the elimination of the risk that the borrower would lose the vehicle. And, if lenders stop the practice of obtaining the ability to withdraw a payment directly from a borrower's account this eliminates the harms associated with that practice, including NSF and overdraft fees, account closure, and the loss of control of the borrower's funds.

If lenders modify the loans they offer to avoid coverage by the rule, some consumers who would otherwise be able to borrow from those lenders may not be able to do so. Eliminating the security interest in a vehicle or the ability to withdraw payments directly from a borrower's account would increase the risk to the lender of default on the loan. This would likely make the lenders more cautious regarding whom they lend to. In addition, if lenders drop the practice of requiring a leverage payment mechanism, this may make paying a loan less convenient for those borrowers who prefer this method of repayment. However, this cost is likely to be minimal because borrowers would have the option of voluntarily establishing automatic repayment later in the term of the loan.

2. Impacts of Portfolio and PAL Approaches

As noted above, the Bureau believes that most covered longer-term loans would be made using the ATR approach. The Portfolio and PAL approaches would each allow lenders making certain types of loans to avoid many of the procedural costs associated with the ATR approach. In addition, because the approaches are less prescriptive as to underwriting and verification requirements, they may allow some loans to be made to borrowers for whom lenders could not make a reasonable determination of ability to repay.

Because these approaches are alternatives to the ATR approach, most of the impacts of these approaches are most easily considered relative to the ATR approach. As noted above, however, the overall impacts of the rule are still being considered relative to a baseline of the existing Federal and State legal, regulatory, and supervisory regimes in place as of the time of the proposal.

(a). Portfolio Approach

To qualify for the Portfolio approach, a lender would need to make loans with a modified total cost of credit of 36 percent or below, and could exclude from the calculation of the modified total cost of credit an origination fee that represents a reasonable proportion of the lender's cost of underwriting loans made pursuant to this exemption, with a safe harbor for a fee that does not exceed $50. Loans would need to be at least 46 days long and no more than 24 months long, have roughly equal amortizing payments due at regular intervals, and not have a prepayment penalty. Finally, a lender's portfolio of loans originated using the Portfolio approach would need to have a portfolio default rate, as defined in § 1041.12(d) and (e), less than or equal to 5 percent per year. If the portfolio default rate were to exceed 5 percent, the lender would be required to refund the origination fees on the loans originated during that period. Consumers could not be indebted on more than two outstanding loans made under this exemption from a lender or its affiliates within a period of 180 days.

Lenders making loans using the Portfolio approach would be required to conduct underwriting, but would have the flexibility to determine what underwriting to undertake consistent with the provisions in proposed § 1041.12. They would not be required to gather information or verification evidence on borrowers' income or major financial obligations nor determine that the borrower has the ability to repay the loan while paying major financial obligations and paying basic living expenses. Lenders making loans using the Portfolio approach would also not be required to obtain a consumer report from a registered information system. Moreover, they would have the option of furnishing information concerning the loan either to each registered information system or to a national consumer reporting agency. They would also not be required to provide the payment notice, the costs and benefits of which are described below in part VI.H.2.

Benefits and Costs to Covered Persons

The Portfolio approach would benefit lenders that originate covered loans but have a very low portfolio default rate. These are most likely to be community banks and credit unions that make these loans to customers or members with whom they have a longstanding relationship,[1012] but could include new entrants who develop sophisticated underwriting approaches that achieve very low default rates. These loans typically carry interest rates below 36 percent and an application or origination fee to cover in-branch or online origination and underwriting costs. Relative to the ATR approach, these lenders would benefit from being able to make these loans without obtaining consumer reports from a registered information system or gathering the information and verification evidence for borrowers' income and major financial obligations. They would also benefit from being able to make loans to borrowers that they judge to pose a very low risk of default, but who would not be able to satisfy ability-to-repay requirements. Considering these impacts, the Bureau believes that lenders who currently make covered loans with very low rates of default would be able to continue to operate as they currently do, with little additional burden imposed by the proposal.

Relative to the ATR approach, lenders using the Portfolio approach would also benefit from not having to provide the payment notices described in the section-by-section analysis of § 1041.15.

Lenders with very low default rates would still incur some costs to use the Portfolio approach. They would be required to break out covered longer-term loans from the rest of their consumer lending activity and calculate the covered portfolio default rate. If that rate exceeded five percent, they would bear the costs of making refunds. Because of the risk of having to refund borrowers' origination fees, lenders would be likely to seek to maintain a portfolio default rate lower than 5 percent, so as to limit the risk that an unexpected increase in the default rate, such as from changing local or national economic conditions, does not push the portfolio default rate above 5 percent.

Lenders making loans using the Portfolio approach would also have to furnish information about those loans either to each registered information system or to a national consumer reporting agency. The Bureau believes that many lenders that would use this approach already furnish information concerning loans that would be covered longer-term loans to a national consumer reporting agency. Those that do not report these loans to a national consumer reporting agency are likely to report other loans, and therefore have the capability, at little additional cost, to also furnish information about these loans.

Lenders may also suffer some loss of revenue from the restriction on making more than two loans in a 180-day period.

Benefits and Costs to Consumers

Relative to the ATR approach, the Portfolio approach would benefit borrowers who a lender believes pose a very low risk of default. It would make the lending process quicker and avoid a situation in which the affected consumers cannot obtain a loan because they cannot satisfy the ability-to-repay requirements.

Borrowers may also benefit if the lender that they borrow from is using the Portfolio approach and has a default rate rise about 5 percent, and is therefore required to refund the borrowers' origination fees.

Because lenders using the Portfolio approach would not have to follow all of the requirements of the ATR approach, some borrowers may bear costs from obtaining loans that they do not have the ability to repay while paying for major financial obligations and basic living expenses. Given the low default rate that lenders would be required to maintain, however, any additional risk to borrowers is likely to be quite small, as only lending to borrowers who pose a very low probability of default would also almost certainly mean only lending to borrowers who are unlikely to have a very difficult time repaying the loan.

Borrowers would also not be able to be indebted on more than two outstanding loans made under the Portfolio approach from the lender or its affiliates within a period of 180 days. The Bureau does not have information about the frequency with which borrowers currently take out loans that would likely be originated as Portfolio approach loans, but given that these are all longer-term loans, the Bureau expects that the impact of this limitation would be small.

[1012] In industry outreach, the Bureau has consistently been told by these types of institutions that their portfolios of loans that would be covered longer-term loans have default rates well below 5 percent.

(b). PAL Approach

To qualify for the PAL approach, a loan could not carry a total cost of credit of more than the cost permissible for Federal credit unions to charge under regulations issued by the NCUA. NCUA permits Federal credit unions to charge an interest rate of 1,000 basis points above the maximum interest rate established by the NCUA Board, and an application fee of not more than $20. The loan would need to be structured with a term of 46 days to six months, with substantially equal and amortizing payments due at regular intervals, and no prepayment penalty. The minimum loan size would be $200 and the maximum loan size $1,000.

Lenders making loans under the PAL approach would be required to maintain and comply with policies and procedures for documenting proof of recurring income, but would not be required to gather other information or engage in underwriting, beyond any underwriting the lender undertakes for its own purposes. Lenders making PAL loans would not be required to obtain a consumer report from a registered information system. Moreover, they would have the option of furnishing information concerning the loan either to each registered information system or to a national consumer reporting agency. They would also not be required to provide a notice before attempting to collect payment directly from a borrower's checking, saving, or prepaid account.

The Bureau believes that the PAL approach would primarily be used by Federal credit unions that currently make loans under the NCUA PAL program. Other covered longer-term loans, other than those made by banks, are generally sufficiently more expensive that modifying the loan terms to comply with the PAL approach requirements would not be feasible. The Bureau expects that loans made by banks will generally be made using the Portfolio approach.

Benefits and Costs to Covered Persons

Relative to the ATR approach, lenders that make loans that meet the criteria of the PAL approach would benefit from being able to make these loans without obtaining a consumer report from a registered information system or gathering the information and verification evidence for borrowers' major financial obligations. They would also benefit from being able to make loans to borrowers for whom the lender could not make a reasonable determination of ability to repay. Relative to the ATR approach, lenders using the PAL approach would also benefit from not having to provide the payment notices described in the section-by-section analysis of § 1041.15.

Lenders making loans using the PAL approach would have to furnish information about those loans either to each registered information system or to a national consumer reporting agency. The Bureau believes that loans made using the PAL approach would primarily be originated by credit unions; 75 percent of Federal credit unions that make loans similar to the loans that would be covered furnish information about those loans to a national consumer reporting agency.[1013] Those that do not report these loans to a national consumer reporting agency are likely to report other loans, and therefore have the capability, at little additional cost, to also report these loans.

Benefits and Costs to Consumers

Relative to the ATR approach, the PAL approach would benefit borrowers who are able to obtain these loans. It would make the lending process quicker and avoid a situation in which consumers could not obtain a loan because they cannot satisfy the ability-to-repay requirements.

Consumers may also benefit if lenders modify their loans to make them fit within the PAL requirements by lowering the cost of the loan, such as limiting the size or term of the loan, and such modification allows consumers to obtain loans that are more suited to their needs. As noted above, however, the Bureau expects that PAL approach loans would be originated primarily by Federal credit unions making loans under the NCUA PAL program, and therefore that it would not be common for other lenders to modify their loans significantly to comply with the PAL approach.

Some consumers may incur costs from the availability of the PAL approach if lenders modify their loans to fit within the PAL requirements in ways that make the loans less well-suited to the consumers' needs. For example, a lender that only makes covered longer-term loans using the PAL approach could not offer a covered loan larger than $1,000 or for a term longer than six months. Consumers seeking larger loans or loans for a longer term, for example, would not be able to obtain a covered longer-term loan from such a lender. These consumers may be able to find a loan more suited to their needs from lenders that are using the ATR approach, if they are able to satisfy the ability-to-repay requirements, or from a lender offering loans under the Portfolio approach. And, as just noted, the Bureau does not expect that many lenders other than Federal credit unions would modify their loan offerings to qualify for the PAL approach.

Because lenders using the PAL approach would not have to follow all of the requirements of the ATR approach, some borrowers may bear costs from obtaining loans that they do not have the ability to repay. Given the restrictions on cost and loan size, however, any additional risk to borrowers is likely to be quite small.

H. Potential Benefits and Costs of Proposals to Consumers and Covered Persons—Provisions Relating to Payment Practices and Related Notices

The proposed rule would limit how lenders initiate payments on a covered loan from a borrower's account and impose two notice requirements relating to those payments. Specifically, lenders would be prohibited from continuing to attempt to withdraw payment from a borrower's account, by any means, if two consecutive prior attempts to withdraw payment directly from the account had failed due to insufficient funds, unless the lender obtains a new and specific authorization to make further withdrawals from the consumer's account. The proposal would also require most lenders to provide a notice to borrowers prior to each attempt to withdraw payment directly from a borrower's account. A special notice would also be required to be sent to the borrower if the lender could no longer continue to initiate payment directly from a borrower's account because two consecutive prior attempts had failed due to insufficient funds. The impacts of these proposals are discussed here for all covered loans.

Note that the Bureau expects that unsuccessful payment withdrawal attempts would be less frequent if the proposal is finalized, both because of the routine pre-withdrawal notices and because the provisions requiring lenders to determine a borrower has the ability to repay before making the borrower a loan or to comply with the requirements of one of the conditional exemptions would reduce the frequency with which borrowers receive loans that they do not have the ability to repay. This should in turn lessen the impacts of the limitation on payment withdrawal attempts and the requirement to notify consumers when a lender would no longer be permitted to attempt to withdraw payments from a borrower's account.

[1013] Nat'l Credit Union Ass'n, Trends and Estimates of Consumer Savings from Payday Alternative Loan Programs, Office of Chief Economist Research Note (April 2015).

Most if not all of the proposed provisions concern activities that lenders could choose to engage in absent the proposal. The benefits to lenders of those provisions are discussed here, but to the extent that lenders do not voluntarily choose to engage in the activities, it is likely the case that the benefits, in the lenders' view, do not outweigh the costs. The Bureau is aware that many lenders have practices of not continuing to attempt to withdraw payments from a borrower's account after one or more failed attempts. In addition, some lenders provide upcoming payment notices to borrowers in some form.

1. Limitation on Payment Withdrawal Attempts

The proposed rule would prevent lenders from attempting to withdraw payment from a consumer's account if two consecutive prior payment attempts made through any channel are returned for nonsufficient funds. The lender could resume initiating payment if the lender obtained from the consumer a new and specific authorization to collect payment from the consumer's account.

(a). Benefits and Costs to Covered Persons

The proposal would impose costs on lenders by limiting their use of payment methods that allow them to withdraw funds directly from borrowers' accounts and by imposing the cost of obtaining a renewed authorization from the consumer or using some other method of collecting payment. There may be some benefits to lenders of not continuing to attempt to withdraw funds following repeated failures, as other methods of collecting may be more successful. As noted above, some lenders already limit their own attempts to withdraw payment from borrowers' accounts following one or more failed attempts.

The impact of this restriction depends on how often a lender currently attempts to collect from a consumers' account after more than two consecutive failed transactions and how often the lender is successful in doing so. Based on industry outreach, the Bureau understands that some lenders already have a practice of not continuing to attempt to collect using these means after one or two failed attempts. These lenders would not incur costs from the proposal.

The Bureau has analyzed the ACH payment request behavior of lenders making payday or payday installment loans online. The Bureau found that about half the time that an ACH payment request fails, the lender makes at least two additional ACH payment requests.[1014] The likelihood of a successful payment request after a request that was returned for insufficient funds is quite low. Only 30 percent of requests that follow a failed request succeed, only 27 percent of third requests succeed, and after that the success rate is below 20 percent.[1015] The Bureau found that only 7 to 10 percent of the payments received through the ACH system came after two failed payments requests, equivalent to $55 to $219 per borrower.[1016] These payments would have been prevented if the proposal had been in place at the time. The Bureau notes that under the proposed restriction, lenders still could seek payment from borrowers and so the preceding are high-end estimates of the impact of the restriction on the payments that would not be collected by these particular lenders if the proposed restriction were in place. These other forms of lawful collection practices, however, may be more costly for lenders than attempting to collect directly from a borrower's account.

After the limitation is triggered by two consecutive failed attempts, lenders would be required to send a notice to consumers. To seek a new and specific authorization to collect payment from a consumer's account, the lender could send a request with the notice and might need to initiate additional follow-up contact with the consumer. The Bureau believes that this would most often be done in conjunction with general collections efforts and would impose little additional cost on lenders.

To the extent that lenders assess returned item fees when an attempt to collect a payment fails and lenders are subsequently able to collect on those fees, this proposal may reduce lenders' revenue from those fees.

Lenders would also need the capability of identifying when two consecutive payment requests have failed. The Bureau believes that the systems lenders use to identify when a payment is due, when a payment has succeeded or failed, and whether to request another payment would have the capacity to identify when two consecutive payments have failed, and therefore this requirement would not impose a significant new cost.

(b). Benefits and Costs to Consumers

Consumers would benefit from the proposed restriction because it would reduce the fees they are charged by the lender and the fees they are charged by their depository institution. Many lenders charge a returned item fee when a payment is returned for insufficient funds. Borrowers would benefit if the reduced number of failed ACH payment requests also results in reductions in the number of these fees, to the extent that they are collected. Borrowers may also benefit from a reduction in the frequency of checking account closure.

Each time an ACH transaction is returned for insufficient funds, the borrower is likely to be charged an NSF fee by her financial institution. In addition, each time a payment is paid by the borrower's financial institution when the borrower does not have sufficient funds in the account to cover the full amount of the payment, the borrower is likely to be charged an overdraft fee. Overdraft and NSF fees each average $34 per transaction.[1017] As noted above, most re-presentments[1018] of failed payment requests themselves fail, leading to NSF fees. In addition, a third of all re-presentments that succeed only succeed because the borrower's financial institution paid it as an overdraft, likely leading to an overdraft fee. The Bureau's analysis of online lender payment practices shows that borrowers who have two payment withdrawal attempts fail are charged additional fees on subsequent payment attempts of $64 to $87. These costs would be prevented by the proposal.[1019]

[1014] *CFPB Online Payday Loan Payments,* Table 2. Lenders make at least one additional request after a failed payment request 74 percent of the time. Two-thirds of these are followed by a third request, if the second also fails. These calculations exclude multiple requests made on the same day, as those requests are unlikely to be intentional re-presentments of failed attempts as the lender is unlikely to know that a payment failed on the same day it was submitted and be able to re-present the request on the same day. The data used in the Bureau's analysis were for 18 months in 2011 and 2012. During this time period, an ACH rule limiting re-presentment of returned entries was in effect. Changes to the rules governing the ACH system in the fall of 2015 may have reduced the frequency with which lenders continue to make ACH payment requests after one or more payment attempts have failed. However, as discussed in Market Concerns—Payments, the Bureau believes that these changes will not eliminate harmful payment practices in this market.

[1015] *Id.,* at Table 1.

[1016] *CFPB Report on Supplemental Findings,* at 150. These impacts may be lower now than they were at the time covered by the data analyzed by the Bureau, due to changes in industry practices and to changes in the rules governing the ACH system referred to in note 974.

[1017] *CFPB Online Payday Loan Payments,* at 2.

[1018] For the purposes of its analysis, the Bureau referred to any payment request following a failed payment request as a "re-presentment." The only exception was when multiple payment requests were submitted on the same day; if two or more failed, only the first failed payment request was considered a re-presentment.

The restriction on repeated attempts to withdraw payments from a borrower's checking account may also reduce the rate of account closure. This benefits borrowers by allowing them to maintain their existing account so as to better manage their overall finances. It also allows them to avoid the possibility of a negative record in the specialty consumer reporting agencies that track involuntary account closures, which can make it difficult to open a new account and effectively cut the consumer off from access to the banking system and its associated benefits. In the data studied by the Bureau, account holders who took out online payday loans were more likely to have their accounts closed by their financial institution than were other account holders, and this difference was substantially higher for borrowers who had NSF online loan transactions.[1020] Borrowers with two consecutive failures by the same lender are significantly more likely to experience an involuntary account closure by the end of the sample period than accountholders generally (43% versus 3%, respectively).[1021] While there is the potential for a number of confounding factors, transactions that were NSFs could contribute to account closure in at least two ways. First, the fees from repeated payment attempts add to the negative balance on the deposit account, making it more difficult for a borrower to bring the account balance positive and maintain a positive balance. And, if a lender is repeatedly attempting to extract money from an account, the borrower may feel that the only way to regain control of her finances is to cease depositing money into the account and effectively abandon it.

The reduced ability to collect by repeatedly attempting to withdraw payments from a borrower's account may increase lenders' credit losses, which may, in turn reduce the availability or raise the cost of credit. As discussed in the consideration of the costs to lenders, this reduction in collections is likely to be quite small. And, as noted above in the discussion of the impacts of the ATR requirements, many lenders already charge the maximum price allowed by State law.

2. Required Notice Prior To Attempt To Collect Directly from a Borrower's Account

The proposal would also require lenders to provide consumers with a notice prior to every lender-initiated attempt to withdraw payment from consumers' accounts, including ACH entries, post-dated signature checks, remotely created checks, remotely created payment orders, and payments run through the debit networks. The notice would be required to include the date the lender would initiate the payment request; the payment channel; the amount of the payment; the breakdown of that amount to principal, interest, and fees; the loan balance remaining if the payment succeeds; the check number if the payment request is a signature check or RCC; and contact information for the consumer to reach the lender. There would be separate notices prior to regular scheduled payments and prior to unusual payments. The notice prior to a regular scheduled payment would also include the APR of the loan.

This requirement would not apply to lenders when making covered longer-term loans under the Portfolio or PAL approaches.

(a). Benefits and Costs to Covered Persons

These notices may reduce delinquencies and related collections activities if consumers take steps to ensure that they have funds available to cover loan payments, such as delaying or forgoing other expenditures or making deposits into their accounts or contacting the lender to make alternative arrangements.

Costs to lenders of providing these notices would depend heavily on whether they are able to provide the notice via email or text messages or would have to send notices through paper mail. This is due in part to differences in transmission costs between different channels, but another source of impact is that lenders would have to initiate paper messages earlier in order to provide sufficient time for them to reach consumers. As discussed in the section-by-section analysis of § 1041.15, most borrowers are likely to have internet access and/or a mobile phone capable of receiving text messages, and during the SBREFA process multiple SERs reported that most borrowers, when given the opportunity, opt in to receiving notifications via text message. As discussed above, the Bureau has intentionally structured the proposal to encourage transmission by email or text message because it believes those channels will be most effective for consumers as well as less burdensome for lenders.

The Bureau believes that all lenders that would be affected by the new disclosure requirements have some disclosure system in place to comply with existing disclosure requirements, such as those imposed under Regulation Z, 12 CFR part 1026, and Regulation E, 12 CFR part 1005. Lenders enter data directly into the disclosure system, or the system automatically collects data from the lenders' loan origination system. For disclosures provided via mail, email, or text message, the disclosure system often forwards the information necessary to prepare the disclosures to a vendor, in electronic form, and the vendor then prepares and delivers the disclosures. Lenders would incur a one-time burden to upgrade their disclosure systems to comply with new disclosure requirements.

Lenders would need to update their disclosure systems to compile necessary loan information to send to the vendors that would produce and deliver the disclosures relating to payments. The Bureau believes that large depositories and non-depositories rely on proprietary disclosure systems, and estimates the one-time programming cost for large respondents to update these systems to be 1,000 labor hours per entity. The Bureau believes small depositories and non-depositories rely on licensed disclosure system software. Depending on the nature of the software license agreement, the Bureau estimates that the cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. For lenders using seat license software, the Bureau estimates that each location for small lenders has on average three seats licensed. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on the entity-level licenses.

Lenders with disclosure systems that do not automatically pull information from the lenders' loan origination or servicing system would need to enter payment information into the disclosure system manually so that the disclosure system can generate payment disclosures. The Bureau estimates that this would require two minutes per loan. Lenders would need to update this information if the scheduled payments were to change.

For disclosures delivered through the mail, the Bureau estimates that vendors would charge two different rates, one for high volume mailings and another for low volume mailings. For the high volume mailings, the Bureau estimates vendors would charge $0.53 per disclosure. For the low volume mailings, the Bureau estimates vendors would charge $1.00 per disclosure. For disclosures delivered through email, the Bureau estimates vendors would charge $0.01 to create and deliver each email such that it complies with the requirements of the proposed rule. For disclosures delivered through text message, the Bureau estimates vendors would charge $0.08 to create and deliver each text message such that it complies with the requirements of the proposed rule. The vendor would also need to provide a Web page where the full disclosure linked to in the text message would be provided. The cost of providing this web disclosure is included in the cost estimate of providing the text message.

[1019] These costs may also be lower now. *See* note 974.

[1020] *CFPB Online Payday Loan Payments,* at 24.

[1021] *CFPB Report on Supplemental Findings,* at 177.

In addition to the costs associated with providing notices, this requirement may impact the frequency with which lenders initiate withdrawal attempts and lenders' revenue. On timing, lenders transmitting paper notices would be required to mail them between six and ten business days prior to the payment initiation, while electronic delivery would be required between three and seven business days in advance. This lag time could affect lenders' decisions as to the timing and frequency of withdrawal attempts. With regard to revenue, impacts could go either way: Payment revenue would be reduced if the notices lead to consumers taking steps to avoid having payments debited from their accounts, including placing stop payment orders or paying other expenses or obligations prior to the posting of the payment request. Alternatively, if the notices help borrowers to ensure that funds are available to cover the payment request, this would reduce lenders' losses from non-payment, although also lower lenders' returned-item fee revenue.

(b). Benefits and Costs to Consumers

Receiving notices prior to upcoming payments would benefit consumers by allowing them to take those payments into account when managing the funds in their accounts. This would allow them to reduce the likelihood that they would run short of funds to cover either the upcoming payment or other obligations. The notice would also help borrowers who have written a post-dated check or authorized an ACH withdrawal, or remotely created check or remotely created payment order, to avoid incurring NSF fees. These fees can impose a significant cost on consumers. In data the Bureau has analyzed, for example, borrowers who took out loans from certain online lenders paid an average of $92 over an 18 month period in overdraft or NSF fees on the payments to, or payment requests from, those lenders.[1022]

The information in the notices may also benefit borrowers who need to address errors or unauthorized payments, by making it easier for the borrower to resolve errors with the lender or obtain assistance through their financial institution prior to the payment withdrawal being initiated.

Some consumers may incur costs for notices sent by text. Consumers can avoid these costs by choosing email or paper delivery of the notices; the Bureau is proposing that lenders must provide an email delivery option whenever they are providing a text or other electronic delivery option.

3. Required Notice When Lender Could No Longer Collect Directly From a Borrower's Account

The proposal would require a lender that has made two consecutive unsuccessful attempts to collect payment directly from a borrower's account to provide a borrower, within three business days of learning of the second unsuccessful attempt, with a consumer rights notice explaining that the lender is no longer able to attempt to collect payment directly from the borrower's account, along with information identifying the loan and a record of the two failed attempts to collect funds.

(a). Benefits and Costs to Covered Persons

This provision may benefit lenders if it leads to consumers contacting the lender to provide a new authorization to withdraw payments from the borrower's account or make other payment arrangements. Lenders, however, would likely attempt to make contact with borrowers to obtain payment even in the absence of this requirement.

The requirement would impose on lenders the cost of providing the notice. Lenders would already need to track whether they can still attempt to collect payments directly from a borrower's account, so identifying which borrowers should receive the notice would not impose any additional cost on lenders. And, the Bureau expects that lenders would normally attempt to contact borrowers in these circumstances to identify other means of obtaining payment. If they are contacting the consumer via mail, the lender would be able to include the required notice in that mailing.

The Bureau expects that lenders would incorporate the ability to provide this notice into their payment notification process. The Bureau estimates that vendors would charge $0.53 per notice sent via paper mail for lenders that send a large number of mailings and $1.00 per notice for lenders that send a small volume of mailing. For disclosures delivered through email, the Bureau estimates vendors would charge $0.01 to create and deliver each email such that it complies with the requirements of the proposed rule. For disclosures delivered through text message, the Bureau estimates vendors would charge $0.08 to create and deliver each text message. The vendor would also need to provide a Web page where the full disclosure linked to in the text message would be provided. The cost of providing this web disclosure is included in the cost estimate of providing the text message.

(b). Benefits and Costs to Consumers

Consumers would benefit from the notice because it would inform them that the lender cannot continue to collect payment directly from their account without their express permission. Absent this notice, borrowers may believe that they are obligated to re-authorize a lender to begin collecting directly from their account, when in many cases the borrower has the option to repay the loan through some other means that carries less risk of fees and provides the borrower with greater control over the timing and prioritization of their expenditures. Conversely, absent some communication from the lender, the borrower may not realize that payment would no longer be withdrawn and, as a result, fail to make payments on a loan.

Some consumers may incur costs for notices sent by text. Consumers can avoid these costs by choosing email or paper delivery of the notices. The Bureau does not believe the required disclosures would impose any other costs on consumers.

I. Potential Benefits and Costs of the Proposed Rule to Consumers and Covered Persons—Recordkeeping Requirements

The proposed rule would require lenders to maintain sufficient records to demonstrate compliance with the proposed rule. This would include, among other records, loan records; materials collected during the process of originating loans, including the information used to determine whether a borrower had the ability to repay the loan, if applicable; records of reporting loan information to a registered information system, as required; records of attempts to withdraw payments directly from borrowers accounts, and the outcomes of those attempts; and, for lenders utilizing the Portfolio approach, records of the calculation of the portfolio default rate.

[1022] *CFPB Online Payday Payments,* at 3.

1. Benefits and Costs to Covered Persons

The Bureau believes that some of the records that lenders would be required to maintain would be maintained in the ordinary course of business. Other records may not be retained in the ordinary course of business. Given the very low cost of electronic storage, however, the Bureau does not believe that this would impose a meaningful new burden on lenders. Lenders would need to develop procedures and train staff to retain materials that they would not normally retain in the ordinary course of business, as well as design systems to generate and retain the required records; those costs are included in earlier estimates of the costs of developing procedures, upgrading systems, and training staff. The Bureau also believes that maintaining the records would facilitate lenders' ability to comply and to document their compliance with other aspects of the rule.

2. Benefits and Costs to Consumers

Consumers would benefit from the requirement to maintain records sufficient to demonstrate compliance because this would make compliance by lenders more likely, and would facilitate enforcement of the proposed rule which would help to ensure that consumers would receive the benefits of the proposed rule.

J. Potential Benefits and Costs of the Proposed Rule to Consumers and Covered Persons—Requirements for Registered Information Systems

As discussed above, the proposed rule would generally require lenders to report covered loans to registered information systems in close to real time. Entities wishing to become registered information systems would need to apply to the Bureau for approval. The proposed process for becoming a registered information system prior to the effective date of proposed § 1041.16 would require an entity to submit an application for preliminary approval with information sufficient to determine that the entity would be reasonably likely to satisfy the proposed conditions to become a registered information system. These conditions include, among other things, that the entity possesses the technical capabilities to carry out the functions of a registered information system; that the entity has developed, implemented, and maintains a program reasonably designed to ensure compliance with all applicable Federal consumer financial laws; and that the entity has developed, implemented, and maintains a comprehensive information security program. If an entity obtains preliminary approval by the Bureau, it would need to provide certain written third-party assessments contemplated by the proposed rule and submit an application to be a registered information system; the proposal would also permit the Bureau to require an entity to submit to the Bureau additional information and documentation to facilitate determination of whether the entity satisfies the eligibility criteria to become a registered information system or otherwise to assess whether registration of the entity would pose an unreasonable risk to consumers.

On or after the effective date of § 1041.16, the proposed rule contemplates a slightly different two-stage process. Specifically, an entity could become provisionally registered by submitting an application that contains information and documentation sufficient to determine that the entity satisfies the proposed conditions to become a registered information system, including the written third-party assessments contemplated by the proposed rule. Lenders would be required to report information to a provisionally registered system, but the reports from such a system would not satisfy the lenders' obligations to check borrowing history until a 180-day period has expired, after which time the system would be deemed a fully registered information system.

Once an entity is a registered information system under either process, the proposal would require the entity to submit biennial assessments of its information security program.

The Bureau expects that applicants to become registered information systems would be primarily, or exclusively, existing consumer reporting agencies. These entities have the technical capacity to receive data on consumer loans from a large number of entities and, in turn, deliver that data to a large number of entities. Depending on their current operations, some firms that wish to apply to become registered information systems may need to develop additional capabilities to satisfy the requirements of the proposed rule, which would require that an entity possess the technical capability to receive specific information from lenders immediately upon furnishing, using reasonable data standards that facilitate the timely and accurate transmission and processing of information in a manner that does not impose unreasonable costs or burdens on lenders, as well as the technical capability to generate a consumer report containing all required information substantially simultaneous to receiving the information from a lender. Because firms currently operating as consumer reporting agencies must comply with applicable existing laws and regulations, including Federal consumer financial laws and the Standards for Safeguarding Customer Information, the Bureau also expects that they should already have programs in place to ensure such compliance, as appropriate, and at most would need to further expand and enhance such programs to satisfy the registration requirements.

1. Benefits and Costs to Covered Persons

The proposal would benefit firms that apply to become registered information systems by requiring lenders to furnish information regarding most covered loans to all registered information systems and to obtain a consumer report from a registered information system before originating most covered loans. The requirement to furnish information would provide registered information systems with detailed data on borrowing of covered loans. The requirement to obtain a consumer report before originating most covered loans would ensure that there would be a market for these reports, which would provide a source of revenue for registered information systems. Registered systems would also be well-positioned to offer lenders supplemental services, for instance in providing assistance with determining consumers' ability to repay.

Any firm wishing to become a registered information system would need to incur the costs of applying to the Bureau. For some firms these costs may consist solely of compiling information about the firms' practices, capabilities, and policies and procedures, all of which should be readily available, and obtaining the required third-party written assessments. Some firms may choose to invest in additional technological or compliance capabilities so as to be able to satisfy the proposed requirements for registered information systems. Although firms currently operating as consumer reporting agencies must comply with applicable existing laws and regulations, including Federal consumer financial laws and the Standards for Safeguarding Customer Information, and should have programs in place to ensure such compliance, as appropriate, independent assessments of these programs, as contemplated in the proposed rule, may impose additional costs for some firms.

Once approved, a registered information system would be required to submit biennial assessments of its information security program. Firms that already obtain independent assessments of their information security programs at least biennially, similar to those contemplated in the proposed rule, would incur very limited cost. Firms that do not obtain biennial independent assessments similar to those contemplated in the proposed rule would need to incur the cost of doing so, which may be substantial.

2. Benefits and Costs to Consumers

The requirement that registered information systems have certain technical capabilities would ensure that the consumer reports that lenders obtain from these systems are sufficiently timely and accurate to achieve the consumer protections that are the goal of this part. This would benefit borrowers by facilitating compliance with the proposed rule's ability to repay requirements and the various conditional exemptions to the ability to repay requirements. Consumers would also benefit from the requirement that systems themselves maintain compliance programs reasonably designed to ensure compliance with applicable laws, including those designed to protect sensitive consumer information. Among other things, these programs would reduce the risk of consumer data being compromised.

K. Alternatives Considered

In preparing the proposed rule, the Bureau has considered a number of alternatives to the provisions proposed. In this section the major alternatives are briefly described and their impacts relative to the proposed provisions are discussed. The proposals discussed here are:

1. Limits on Reborrowing of Covered Short-Term Loans Without an Ability-to-Repay Requirement;
2. An Ability-to-Repay Requirement for Short-Term Loans With No Alternative Approach;
3. Disclosures as an Alternative to the Ability-to-Repay Requirement; and,
4. Limitations on Withdrawing Payments From Borrowers' Account Without Associated Disclosures.

1. Limits on Reborrowing of Covered Short-Term Loans Without an Ability-to-Repay Requirement

The Bureau considered not imposing a requirement that lenders making covered short-term loans determine the ability of borrowers to repay the loans, and instead proposing solely to limit the number of times that a lender could make a covered short-term loan to a borrower. Such a restriction could take the form of either a limit on the number of loans that could be made in sequence or a limit on the number of loans that could be made in a certain period of time, as discussed above in connection with alternatives to the presumptions framework in proposed § 1041.6.

The impacts of such an approach would depend on the specific limitation adopted. One approach the Bureau considered would have been to prevent a lender from making a covered short-term loan to a borrower if that loan would be the fourth covered short-term loan to the borrower in a sequence. A loan would be considered part of the same sequence as a prior loan if it were taken out within 30 days of when the prior loan were repaid or otherwise ceased to be outstanding.

A limit on repeated lending of this type would have procedural costs similar to the Alternative approach, and therefore lower than the ATR approach to making short-term loans.

The impacts of this limitation on payday or vehicle title lender revenue would be less than the current proposal. The ATR approach and the repeated lending limit would both place a three-loan cap on loan sequences, but the ATR approach would impose the requirement that a lender not make a first loan without determining the borrower has the ability to repay the loan. The ATR approach would also require lenders to document that borrowers have had an improvement in their financial capacity before making a second or third loan in a sequence.

The repeated lending limit would also have less impact on payday lender revenue than would the Alternative approach. The Alternative approach would also limit loan sequence to no more than three loans, but would, in addition, impose loan size limitations and limit borrowers to no more than six loans in a year and no more than 90 days in debt per year on a covered short-term loan. While payday lenders could make loans using the ATR approach to borrowers who had reached the annual borrower limits, the ATR approach, as noted above, would allow less lending than the repeated lending limit.

The Bureau believes that if repeated lending were limited, lenders would have stronger incentives compared to today to underwrite borrowers for ability to repay because loan sequences would be cut off after the threshold is reached, rather than being able to continue for as long as the consumer is able to sustain rollover payments. However, a rule that relied solely on limiting repeat lending would increase the risk that borrowers would wind up with loans that they would not have the ability to repay relative to the proposed rule. This approach would also lack the protections of the Alternative approach, which provides for mandatory reductions in loan size across a sequence of loans. The Bureau believes that this step-down system would make it more likely that borrowers will successfully repay a loan or short loan sequence than would a limit on repeated lending, which might produce more defaults at the point that further reborrowing would be prohibited. And, without the Alternative approach's limits on the number of loans per year and the limit on the time in debt, some borrowers might effectively continue their cycle of reborrowing by returning as soon the 30-day period has ended.

2. An Ability-to-Repay Requirement for Short-Term Loans With No Alternative Approach

The Bureau also considered proposing the ATR approach without proposing the Alternative approach for covered short-term loans. This would have a larger impact on the total volume of payday loans that could be originated than would the proposal. As described in part VI.F.1(c), the Bureau's estimates of the relative impacts of the reborrowing limitations of the ATR approach and the Alternative approach depends on details of how borrowers behave when loan sequences are cut off. The ATR approach, however, also prevents loans to borrowers when the lender determines that the borrower does not have the ability to repay the loan. Analysis described in part VI.F.1(c) shows that this is likely to prevent a substantial share of payday loans from being made.

Without the Alternative approach, lenders would also be required to incur the expenses of the ATR approach for all payday loans. Together, these effects would increase the loss in revenue and the operating costs of lenders making payday loans.

The lack of an Alternative approach would make payday loans less available. Borrowers who had not recently had a payday loan but could not demonstrate an ability to repay the loan would be unable to take out a payday loan. It would also make taking out a second loan within 30 days of a prior loan more difficult, as this would only be an option for borrowers who could document an improvement in their financial capacity. And, borrowers would not have the benefit of the step-down in loan size across a sequence of loans, which the Bureau believes will reduce the likelihood that borrowers will default on their covered short-term loans.

3. Disclosures as an Alternative to the Ability-to-Repay Requirement

The Bureau considered whether to require disclosures to borrowers warning of the risk of reborrowing or default, rather than the ATR approach and the several alternatives to the ATR approach.

The Bureau believes that a disclosure-only approach would have lower procedural costs for lenders than would the ATR approach, the Alternative approach, the Portfolio approach, or the PAL approach. If lenders were required to prepare disclosures that were customized to a particular loan, that would impose some additional cost over current practices. If lenders could simply provide standardized disclosures, that would impose almost no additional cost on lenders.

A disclosure-only approach would also have substantially less impact on the volume of covered short-term lending. Evidence from a field trial of several disclosures designed specifically to warn of the risks of reborrowing and the costs of reborrowing showed that these disclosures had a marginal effect on the total volume of payday borrowing.[1023] Analysis by the Bureau of similar disclosures implemented by the State of Texas, showing a reduction in loan volume of 13 percent, confirms the limited magnitude of the impacts from the field trial.

The Bureau believes that a disclosure-only approach would also have substantially less impact on the harms consumers experience from long sequences of payday and single-payment vehicle title loans. Given that loans in very long sequences make up well over half of all payday and single-payment vehicle title loans, a reduction of 13 percent in total lending clearly has only a marginal impact on those harms. In addition, analysis by the Bureau of the impacts of the disclosures in Texas shows that the probability of reborrowing on a payday loan declined by approximately 2 percent once the disclosure was put in place, indicating that high levels of reborrowing and long sequences of payday loans remain a significant source of consumer harm. A disclosure-only approach would also not change lenders incentives to encourage borrowers to take out long sequences of covered short-term loans.

While similar empirical evidence is not available for disclosures warning borrowers taking out covered longer-term loans of the risks associated with those loans, the Bureau believes that such disclosure would also be ineffective in warning borrowers of those risks and preventing the harms that the Bureau seeks to address with the proposal. Due to the potential for tunneling in their decision-making and general optimism bias, as discussed in more detail in Market Concerns—Short-Term Covered Loans and Market Concerns—Longer-Term Covered Loans, borrowers are likely to dismiss warnings of possible negative outcomes as not applying to them, and to not focus on disclosures of the possible harms associated with an outcome, default, that they do not anticipate experiencing themselves. To the extent the borrowers have thought about the likelihood that they themselves will default on a loan, a general warning about how often people default is unlikely to cause them to revise their own expectations about the chances they themselves will default.

4. Limitations on Withdrawing Payments From Borrowers' Account Without Associated Disclosures

The Bureau considered including the proposed limitation on lenders continuing to attempt to withdraw payment from borrowers' accounts after two sequential failed attempts to do so, but not including the required disclosures of upcoming payments (both usual and unusual payments) or the notice that would be sent when a lender could no longer continue to attempt to collect payments from a borrower account. The impacts of excluding the upcoming payment notices would simply be to not cause lenders and borrowers to experience the benefits and costs that are described in the discussion of the impacts of those provisions. With regard to the notice that a lender could no longer attempt to withdraw payment from a borrower's account, the primary effect would be analogous, and the benefits and costs are described in the discussion of the impacts of the provision that would require that notice. In addition, however, there may be a particular interaction if lenders were prevented from continuing to attempt to withdraw payment from a borrower's account but the borrower did not receive a notice explaining that. Absent some communication from the lender, the borrower may not realize that payment would no longer be withdrawn and, as a result, fail to make payments on a loan. Lenders would presumably reach out to borrowers to avoid this eventuality. In addition, absent the notice, borrowers may be more likely to believe that they are required to provide lenders with a new authorization to continue to withdraw payments directly from their accounts, when they may be better off using some alternative method of payment.

L. Potential Impact on Depository Creditors With $10 Billion or Less in Total Assets

The Bureau believes that depository institutions and credit unions with less than 10 billion dollars in assets rarely originate loans that would be covered short-term loans. The Bureau believes that some of these institutions do originate loans that would be covered longer-term loans.

As discussed in Part II, some community banks make loans that are secured by a borrower's vehicle. These loans generally have interest rates well below 36 percent but have origination fees that cause smaller loans to have a total cost of credit above 36 percent. The Bureau believes that community banks that make these loans would do so primarily by using the Portfolio approach. Community banks have told the Bureau that, because they lend primarily to customers with whom they are already familiar and with whom they have an ongoing relationship, their default rates are generally well below 5 percent. The banks may need to adjust their pricing to fall within the requirements of the Portfolio approach, such as by lowering their origination fee. If they are unable to raise the interest rate to compensate for the lower fee this would result in reduced revenue. Alternatively, a bank could document the costs associated with originating a loan and charge a fee commensurate with those costs. Banks that do not report the loans that would be covered loans to a national consumer reporting agency would incur the costs of that reporting or the costs of reporting the loans to registered information systems. The Bureau believes, however, that even if a community bank is not reporting these particular loans the bank would be reporting other loans to one or more national consumer reporting agencies, and therefore the costs of reporting these loans, as well, would be quite limited.

[1023] Marianne Bertrand & Adair Morse, *Information Disclosure, Cognitive Biases and Payday Borrowing and Payday Borrowing*, 66 J. Fin. 1865 (2011), *available at http://onlinelibrary.wiley.com/doi/10.1111/j.1540-6261.2011.01698.x/full.*

Some small Federal credit unions make loans to their members as part of the NCUA PAL program. Similar to the loans made by community banks, many have origination fees that cause the total cost of credit to be above 36 percent, and many are repaid directly from the member's deposit account. As a result, many loans originated under the PAL program would be covered longer-term loans. The Bureau believes that small credit unions that make PAL loans would continue to do so, using the PAL approach. This proposed approach would impose two additional requirements on credit unions beyond those of the NCUA PAL program. Loans would need to be at least 46 days in length; the Bureau believes that most PAL loans are already more than 46 days long. And, credit unions that do not currently report PAL loans to a national consumer reporting agency would be required either to do so or to report the loans to each registered information system, and to incur the costs of reporting. The majority, 75 percent, of Federal credit unions that make loans similar to the loans that would be covered furnish information about those loans to a national consumer reporting agency.[1024] In addition, the Bureau believes that even if a credit union is not reporting PAL loans the credit union is reporting other loans, and therefore the costs of reporting PAL loans, as well, would be quite limited.

M. Impact on Consumers in Rural Areas

Consumers in rural areas would have a greater reduction in the availability of covered short-term loans originated through storefronts than would consumers living in areas that are not rural. As described in parts VI.F.1(b) and VI.F.2(b), the Bureau estimates that the proposed restrictions on making covered short-term loans would likely lead to a substantial contraction in the markets for storefront payday loans and storefront single-payment vehicle title loans. The Bureau has analyzed how State laws in Colorado, Virginia, and Washington that led to significant contraction in the number of payday stores in those States affected the geographic availability of storefront payday loans in those states.[1025] In those states, nearly all borrowers living in non-rural areas (or MSAs) still had physical access to a payday store.[1026] A substantial minority of borrowers living outside of MSAs, however, no longer had a payday store readily available following the contraction in the industry. In Colorado, Virginia, and Washington, 37 percent, 13 percent, and 30 percent of borrowers, respectively, would need to travel at least five additional miles to reach a store that remained open.[1027] Thirty seven percent would also need to travel at least 20 miles in Colorado.[1028] In Virginia, almost all borrowers had a store that remained open within 20 miles of their previous store.[1029] And, in Washington 9 percent of borrowers would have to travel at least 20 additional miles.[1030] While many borrowers who live outside of MSAs do travel that far to take out a payday loan, many do not,[1031] and the additional travel distance would impose a cost on these borrowers and may make borrowing from storefront lenders impractical or otherwise cause them to choose not to borrow from such lenders. Rural borrowers for whom visiting a storefront payday lender becomes impracticable would retain the option to seek covered loans from online lenders, subject to the restrictions of State and local law.

The Bureau has not been able to study a similar contraction in the single-payment vehicle title market, but expects that the relative impacts on rural and non-rural consumers would be similar to what has occurred in the payday market. That is, rural consumers are likely to experience a greater reduction in the physical availability of single-payment vehicle title loans made through storefronts.

Other than the greater reduction in the physical availability of covered short-term loans made through storefronts, the Bureau does not believe that consumers living in rural areas would experience substantially different effects of the proposed regulation than other consumers.

N. Request for Information

The Bureau will further consider the benefits, costs and impacts of the proposed provisions and additional proposed modifications before finalizing the proposal. As noted above, there are a number of areas in which additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. Information provided by interested parties regarding these and other aspects of the proposed rule may be considered in the analysis of the benefits, costs, and impacts of the final rule.

VII. Regulatory Flexibility Act Analysis

Under section 603(a) of the Regulatory Flexibility Act (RFA), an initial regulatory flexibility analysis (IRFA) "shall describe the impact of the proposed rule on small entities." [1032] Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires the IRFA to contain a description of the reasons why action by the agency is being considered; [1033] section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[1034] The IRFA further must contain a description of and, where feasible, provide an estimate of the number of small entities to which the proposed rule will apply.[1035] Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[1036] In addition, the Bureau must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[1037] The Bureau, further, must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[1038] Finally, section 603(d) of the RFA requires that the IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[1039]

[1024] Nat'l Credit Union Ass'n, Trends and Estimates of Consumer Savings from Payday Alternative Loan Programs, Office of Chief Economist Research Note (April 2015).

[1025] *CFPB Supplemental Findings,* at ch. 3.

[1026] *Id.,* at 97.

[1027] *Id.*

[1028] *Id.*

[1029] *Id.*

[1030] *Id.*

[1031] *Id.* at 93.

[1032] 5 U.S.C. 603(a).

[1033] 5 U.S.C. 603(b)(1).

[1034] 5 U.S.C. 603(b)(2).

[1035] 5 U.S.C. 603(b)(3).

[1036] 5 U.S.C. 603(b)(4).

[1037] 5 U.S.C. 603(b)(5).

[1038] 5 U.S.C. 603(c).

1. Description of the Reasons Why Agency Action Is Being Considered

As discussed in Market Concerns—Short-Term Loans, Market Concerns—Longer-Term Loans, and Market Concerns—Payments above, the Bureau is concerned that practices in the market for payday, vehicle title, and installment loans pose significant risk of harm to consumers. In particular, the Bureau is concerned about the harmful impacts on consumers of the practice of making these loans without making a reasonable determination that the consumer can afford to repay the loan while paying for major financial obligations and basic living expenses. In addition, the Bureau is concerned that lenders in this market are using their ability to initiate payment withdrawals from consumers' accounts in ways that cause substantial injury to consumers.

To address these concerns, the proposed rule would identify certain practices in the markets for covered loans as an unfair and abusive act or practice and would impose certain requirements in connection with the extension and servicing of covered loans in order to prevent those unfair and abusive acts and practices. For a further description of the reasons why agency action is being considered, see the discussions in Market Concerns—Short-Term Loans, Market Concerns—Longer-Term Loans, and Market Concerns—Payments, above.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Bureau is issuing the proposed rule pursuant to its authority under the Dodd-Frank Act in order to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions, to set forth requirements for preventing such acts or practices, to exempt loans meeting certain conditions from those requirements, to prescribe requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers, and to prescribe processes and criteria for registration of information systems.

In particular, section 1031(b) of the Dodd-Frank Act provides the Bureau with authority to prescribe rules to identify and prevent unfair, deceptive, and abusive acts or practices.[1040] Section 1031(c) of the Dodd-Frank Act sets forth the standard for "unfair" acts or practices;[1041] section 1031(d) of the Dodd-Frank Act sets forth the standard for "abusive" acts or practices.[1042] The proposed rule would identify certain acts or practices related to covered loans as unfair and abusive and would prescribe requirements for the purposes of preventing such acts or practices.[1043]

The Bureau's proposal would also promote consumer comprehension through disclosures and provide model disclosure forms. Section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are "fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the benefits, costs, and risks associated with the product or service, in light of the facts and circumstances." [1044] Section 1032(b)(1) of the Dodd-Frank Act provides that any final rule prescribed by the Bureau under Dodd-Frank Act section 1032 requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.[1045]

Under section 1022(b) of the Dodd-Frank Act, the Bureau is authorized to "prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." [1046] Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau to, by rule, "conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services" from any provision of Title X or from any rule issued under Title X as the Bureau determines "necessary or appropriate to carry out the purposes and objectives" of Title X, taking into consideration the factors set forth in section 1022(b)(3)(B) of the Dodd-Frank Act.[1047] In exercise of these authorities, the Bureau's proposal would provide a partial and conditional exemption from parts of the proposed rule for certain covered loans.

The sections of the Bureau's proposal that would govern furnishing of information to registered information systems and would prescribe processes and criteria for registration of information systems are also authorized by additional Dodd-Frank authorities, including Dodd-Frank Act sections 1021(c)(3),[1048] 1022(c)(7),[1049] 1024(b)(1),[1050] and 1024(b)(7).[1051]

The legal basis for the proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V.

3. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[1052] A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[1053] Under such standards, banks and other depository institutions are considered "small" if they have $550 million or less in assets, and for most other financial businesses, the threshold is average annual receipts (*i.e.*, annual revenues) that do not exceed $38.5 million.[1054]

During the SBREFA process, the Bureau identified four categories of small entities that may be subject to the proposed rule for purposes of the RFA. The categories and the SBA small entity thresholds for those categories are: (1) Commercial banks, savings associations, and credit unions with up to $550 million in assets, (2) nondepository institutions engaged in consumer lending or credit intermediation activities with up to $38.5 million in annual revenue, (3) nondepository institutions engaged in other activities related to credit intermediation activities with up to $20.5 million in annual revenue, and (4) mortgage and non-mortgage loan brokers with up to $7.5 million in annual revenue.

Since the time the Small Business Review Panel Report was completed, some of the data sources that the Bureau used to estimate the numbers of small entities of different types have released updated information and the Bureau has revised some aspects of the estimation procedure. The following table provides the Bureau's revised estimates of the number and types of entities that may be affected by the proposed rule:[1055]

[1039] 5 U.S.C. 603(d)(1).

[1040] 12 U.S.C. 5531(b).

[1041] 12 U.S.C. 5531(c).

[1042] 12 U.S.C. 5531(d).

[1043] 12 U.S.C. 5531(b) (providing that "rules under this section may include requirements for the purposes of preventing such acts or practices.")

[1044] 12 U.S.C. 5532(a).

[1045] 12 U.S.C. 5532(b)(1).

[1046] 12 U.S.C. 5512(b)(1).

[1047] 12 U.S.C. 5512(b)(3)(A).

[1048] 12 U.S.C. 5511(c)(3).

[1049] 12 U.S.C. 5512(c)(7).

[1050] 12 U.S.C. 5514(b)(1).

[1051] 12 U.S.C. 5514(b)(7).

[1052] 5 U.S.C. 601(6).

[1053] 5 U.S.C. 601(3). The current SBA size standards are found on SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards.*

[1054] *See id.*

Table 1—Estimated Number and Types of Affected Entities and Small Entities by NAICS Code

NAICS Industry	NAICS Code	Small entity threshold	Estimated number of total entities	Estimated number of small entities
Commercial Banks, Savings Institutions, and Credit Unions.[a]	522110; 522120; 522130	$550 million in assets	13,348	11,676
Nondepository Institutions Engaged in Consumer Lending or Credit Intermediation Activities.[b]	522298	$38.5 million in annual revenues	5,523	5,403
Nondepository Institutions Engaged in Other Activities Related to Credit Intermediation Activities.[b]	522390	$20.5 million in annual revenues	4,701	4,549
Mortgage and Non-Mortgage Loan Brokers[b]	522310	$7.5 million in annual revenues	7,007	6,817
Consumer Lending[b]	522291	$38.5 million in annual revenues	3,206	3,130

[a] Total number of entities and small entities was estimated based on the 2014 Call Report.

[b] Total number of entities and small entities was estimated based on the Census Bureau's Statistics of U.S. Businesses for 2012.

As discussed in the Small Business Review Panel Report, the NAICS categories are likely to include firms that do not extend credit that would be covered by the proposed rule. The following table provides the Bureau's estimates of the numbers and types of small entities within particular segments of primary industries that may be affected by the proposed rule:

Table 2—Estimated Number and Types of Affected Small Entities by Industry Category

Industry category	NAICS Code	Small entity threshold	Estimated number of small entities
Storefront Payday Lenders[a]	522390	$20.5 million in annual revenue	2,218
Storefront Payday Lenders Operating Primarily as Brokers[a]	522310	$7.5 million in annual revenue	229
Storefront Installment Lenders[b]	522291	$38.5 million in annual revenue	1,577
Storefront Vehicle Title Lenders[c]	522298	$38.5 million in annual revenue	812
Online Lenders[d]	522298; 522390	$20.5 million or 38.5 million in annual revenue	124
Credit Unions[e]	522130	$550 million in assets	6,622
Banks and Thrifts[e]	522110; 522120	$550 million in assets	6,726

[a] The number of small storefront payday lenders is estimated using licensee information from State financial regulators, firm revenue information from public filings and non-public sources, and, for a small number of States, industry market research relying on telephone directory listings.[1056] Based on these sources, there are approximately 2,256 storefront payday lenders in the United States. Based on the publicly-available revenue information, at least 38 of the firms have revenue above the small entity threshold. Most of the remaining firms operate a very small number of storefronts. Therefore, while some of the firms without publicly available information may have revenue above the small entity threshold, in the interest of being inclusive they are all assumed to be small entities.

[b] The number of storefront installment lenders is estimated using industry estimates of the overall number of installment loan storefront locations and information on the number of locations of the largest storefront installment lenders.[1057] A recent industry report estimated that there are between 8,000 and 10,000 storefront installment lender locations. Based on publicly-available information, approximately 58 of the largest firms have revenue above the small entity threshold. These larger firms operate approximately 5,718 storefronts, leaving, on the high end, approximately 4,282 storefronts operated by small entities. The number of small entities likely is on the high end of potential estimates of the number of entities that would be affected by the proposal, as not all small storefront installment lenders originate covered loans.

[c] The number of small storefront vehicle title lenders is estimated using licensee information from State financial regulators and revenue information from public filings and from non-public sources.[1058] Based on these sources, there are approximately 842 storefront vehicle title lenders in the United States. Based on the revenue information, at least 30 of the firms have revenue above the small entity threshold. Most of the remaining firms operate a very small number of storefronts. Therefore, while some of the firms without publicly available information may have revenue above the small entity threshold, in the interest of being inclusive they are all assumed to be small entities.

[1055] In the Small Business Review Panel Report, chapter 9.1, a preliminary estimate of affected entities and small entities was included in a similar format (a chart with clarifying notes). *See Small Business Review Panel Report* at 26-27.

[d] The number of small online lenders is estimated based on bureau outreach and on estimates from nonPrime101, *Report 1: Profiling Internet Small Dollar Lending—Basic Demographics and Loan Characteristics,* at 3 (2014), *https://www.nonprime101.com/wp-content/uploads/2015/02/Profiling-Internet-Small-Dollar-Lending-Final.pdf.* The Bureau solicits data and information that would supplement existing estimates of the number of small entities that are online lenders.

[e] The estimate for banks, savings associations, and credit unions (collectively, depository institutions or "DIs") is on the high end of the possible number of small entities that would be subject to the Bureau's proposal, as not all small DIs originate covered loans. However, the Bureau does not have complete information about how many small DIs originated covered loans. DIs would most likely be affected by the proposals if they originate small loans with substantial application or underwriting fees and take a non-purchase money security interest in a personal vehicle or have access to a consumer's account for repayment. In 2014, 533 Federal credit unions originated loans under the NCUA Payday Alternative Loan program and would likely be affected by the proposal. Not all of these 533 Federal credit unions are small entities and therefore, this figure is likely overstated for the purposes of establishing the number of small entities that would be affected by the proposal.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of Classes of Small Entities Which Will Be Subject to the Requirements and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The proposed rule imposes new reporting, recordkeeping, and compliance requirements on certain small entities. These requirements and the costs associated with them are discussed below.

a. Reporting Requirements

The proposed rule imposes new reporting requirements to ensure that lenders making most covered loans under the proposal have access to timely and reasonably comprehensive information about a consumer's current and recent borrower history with other lenders, as discussed in the section-by-section analysis for proposed § 1041.16. This section discusses these reporting requirements and their associated costs on small entities and is organized into two main subsections—those relating to covered short-term loans and those relating to covered longer-term loans—to facilitate a clear and complete consideration of those costs.

Reporting Requirements for Covered Short-Term Loans

Lenders making covered short-term loans would be required to furnish information about those loans to all information systems that have been registered with the Bureau for 120 days or more, have been provisionally registered with the Bureau for 120 days or more, or have subsequently become registered after being provisionally registered (generally referred to here as registered information systems). At loan consummation, the information furnished would need to include identifying information about the borrower, the type of loan, the loan consummation date, the principal amount borrowed or credit limit (for certain loans), and the payment due dates and amounts. While a loan is outstanding, lenders would need to furnish any update to information previously furnished pursuant to the rule within a reasonable period of time following the event prompting the update. And when a loan ceases to be an outstanding loan, lenders would need to furnish the date as of which the loan ceased to be outstanding, and, for certain loans that have been paid in full, the amount paid on the loan.

Costs to Small Entities

Furnishing information to registered information systems would require small entities to incur one-time and ongoing costs. One-time costs include those associated with establishing a relationship with each registered information system and developing procedures for furnishing the loan data. Lenders using automated loan origination systems would likely modify those systems, or purchase upgrades to those systems, to incorporate the ability to furnish the required information to registered information systems.[1059]

The ongoing costs would be those of actually furnishing the data. Lenders with automated loan origination and servicing systems with the capacity to furnish the required data would have very low ongoing costs. Lenders that report information manually would likely do so through a web-based form, which the Bureau estimates would take five to 10 minutes to fill out for each loan at the time of consummation and when the loan ceases to be an outstanding loan, as well as other times when lenders must furnish any updates to information previously furnished. Assuming that multiple registered information systems existed, it might be necessary to incur this cost multiple times, although common data standards or other approaches may minimize such costs.

The Bureau notes that some lenders in States where a private third-party operates reporting systems on behalf of State regulators are already required to provide similar information, albeit to a single reporting entity, and so have experience complying with this type of requirement. The Bureau also intends to foster the development of common data standards where possible for registered information systems to reduce the costs of providing data to multiple services.

In addition to the costs of developing procedures for furnishing the specified information to registered information systems, lenders would also need to train their staff in those procedures. The Bureau estimates that lender personnel engaging in furnishing information would require approximately half an hour of initial training in carrying out the tasks described in this section and 15 minutes of periodic ongoing training per year.

Reporting Requirements for Covered Longer-Term Loans—ATR Approach

Lenders making covered longer-term loans under the ATR approach, as described above in proposed § 1041.9, would be required to furnish information about those loans to all information systems that have been registered with the Bureau for 120 days or more, have been provisionally registered with the Bureau for 120 days or more, or have subsequently become registered after being provisionally registered (generally referred to here as registered information systems). At loan consummation, the information furnished would need to include identifying information about the borrower, the type of loan, the loan consummation date, the principal amount borrowed or credit limit (for certain loans), and the payment due dates and amounts. While a loan is outstanding, lenders would need to furnish any update to information previously furnished pursuant to the

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[1056] State reports supplemented with location information prepared by Steven Graves and Christopher Peterson, available at *http://www.csun.edu/~sg4002/research/data/US_pdl_addr.xls.*

[1057] John Hecht, Stephens Inc., *Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework* (2014), *available at http://cfsaa.com/Portals/0/cfsa2014_conference/Presentations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf.*

[1058] State reports supplemented with estimates from Susanna Montezemolo, Ctr. for Responsible Lending, *Car-Title Lending: The State of Lending in America & its Impact on U.S. Households* (2013), *available at http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf.*

[1059] Some software vendors that serve lenders that make payday and other loans have developed enhancements to enable these lenders to report loan information automatically to existing State reporting systems.

rule within a reasonable period of the event prompting the update. And when a loan ceases to be an outstanding loan, lenders would need to furnish the date as of which the loan ceased to be outstanding.

Costs to Small Entities

Furnishing information to registered information systems would require small entities to incur one-time and ongoing costs. These include costs associated with establishing a relationship with each registered information system and developing procedures for furnishing the loan data. Lenders using automated loan origination systems would likely modify those systems, or purchase upgrades to those systems, to incorporate the ability to furnish the required information to registered information systems.

The ongoing costs would be those of actually furnishing the data. Lenders with automated loan origination and servicing systems with the capacity to furnish the required data would have very low ongoing costs. For example, lenders or vendors may develop systems that would automatically transmit loan data to registered information systems. Some software vendors that serve lenders that make payday and other loans have developed enhancements to enable these lenders to report loan information automatically to existing State reporting systems; similar enhancements could automate reporting to one or more registered information systems. Lenders that report information manually would likely do so through a web-based form, which the Bureau estimates would take five to 10 minutes to fill out for each loan at the time of consummation, and when the loan ceases to be an outstanding loan, as well as other times when lenders must furnish any updates to information previously furnished. Assuming that multiple registered information systems existed, it might be necessary to incur this cost multiple times, although common data standards or other approaches may minimize such costs.

In addition to the costs of developing procedures for furnishing the specified information to registered information systems, lenders would also need to train their staff in those procedures. The Bureau estimates that lender personnel engaging in furnishing information would require approximately half an hour of initial training in carrying out the tasks described in this section and 15 minutes of periodic ongoing training per year.

Reporting Requirements for Covered Longer-Term Loans—Portfolio or PAL Approach

Lenders making covered longer-term loans using the Portfolio or PAL approach as alternatives to the ATR approach would also have to furnish information about those loans but would have the option of furnishing either to each registered information system or to a national consumer reporting agency.[1060] The Bureau believes that many lenders that would use either the Portfolio approach or the PAL approach already furnish information concerning loans that would be covered longer-term loans to a national consumer reporting agency. Those that do not report these loans to a national consumer reporting agency are likely to report other loans, and therefore have the capability, at little additional cost, to also furnish information about these loans.

b. Recordkeeping Requirements

The proposed rule imposes new data retention requirements for the requirements to assess borrowers' ability to repay and alternatives to the requirement to assess borrowers' ability to repay for both covered short-term and covered longer-term loans by requiring lenders to maintain evidence of compliance in electronic tabular format for certain records. The proposed retention period is 36 months, as discussed above in the section-by-section analysis for proposed § 1041.18. The following section discusses the costs of the new recordkeeping requirements on small entities that originate covered short-term loans and those originating covered longer-term loans.

Costs to Small Entities Originating Covered Short-Term Loans

The data retention requirement in the proposed rule may result in costs to small entities. The Bureau believes that not all small lenders currently maintain data in an electronic tabular format. To comply with the proposed record retention provisions, therefore, lenders originating covered short-term loans may be required to reconfigure existing document production and retention systems. For small entities that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in an electronic tabular format will impose a substantial burden. The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the Requirements and Alternatives to the Requirements to Assess Borrowers' Ability to Repay. Similarly, small entities that rely on vendors would likely rely on vendor software and systems to comply in part with the data retention requirements.

In addition to the costs described above, lenders would also need to train their staff in record retention procedures. The Bureau estimates that lender personnel engaging in recordkeeping would require approximately half an hour of initial training in carrying out the tasks described in this section and 15 minutes of periodic ongoing training per year.

Costs to Small Entities Originating Covered Longer-Term Loans

The Bureau estimates that the costs associated with the new recordkeeping requirements of the proposed rule on small entities originating covered longer-term loans are the same as the costs on small entities originating covered short-term loans, as described above. The Bureau solicits comment on the costs of recordkeeping for small entities.

c. Compliance Requirements

The analysis below discusses the costs of compliance for small entities of the following major proposed provisions:

1. Provisions Relating Specifically to Covered Short-Term Loans:

a. Requirement to determine borrowers' ability to repay, including the requirement to obtain a consumer report from registered information systems;

b. Limitations on making loans to borrowers with recent covered loans; and,

c. Alternative to the requirement to determine borrowers' ability to repay, including notices to consumers taking out loans originated under this alternative;

2. Provisions Relating Specifically to Covered Longer-Term Loans:

a. Requirement to determine borrowers' ability to repay, including the requirement to obtain information from registered information systems;

b. Limitations on making loans to borrowers with recent covered loans: and,

c. Alternatives to the requirement to determine borrowers' ability to repay:

3. Provisions Relating to Payment Practices:

a. Limitations on continuing to attempt to withdraw money from a borrower's account after two consecutive failed attempts; and,

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[1060] *See* proposed §§ 1041.11 and 1041.12 for descriptions of the qualifications for making loans under the Portfolio approach and PAL approach, respectively.

b. Payment notice requirements.

The discussions of the impacts are organized into the three main categories of provisions listed above—those relating to covered short-term loans, those relating to covered longer-term loans, and those relating to limitations of payment practices. Within each of these main categories, the discussion is organized to facilitate a clear and complete consideration of the impacts of the major provisions of the proposed rule on small entities.

In considering the potential impacts of the proposal, the Bureau takes as the baseline for the analysis the regulatory regime that currently exists for the covered products and covered persons.[1061] These include State laws and regulations; Federal laws, such as the MLA, FCRA, FDCPA, TILA, EFTA, and the regulations promulgated under those laws; and, with regard to depository institutions that make covered loans, the guidance and policy statements of those institutions' prudential regulators.[1062]

The proposal includes several exemptions which have the effect of creating alternative methods of compliance, and in places it is useful to discuss their benefits, costs, and impacts relative to those of the core provisions of the proposed regulation to which they are an alternative. The baseline for evaluating the full potential benefits, costs, and impacts of the proposal, however, is the current regulatory regime as of the issuance of the proposal.

The Bureau solicits comments on all aspects of quantitative estimates provided below, as well as comments on the qualitative discussion where quantitative estimates are not provided. The Bureau also solicits data and analysis that would supplement the quantitative analysis discussed below or provide quantitative estimates of benefits, costs, or impacts for which there are currently only qualitative discussions.

The discussion here is confined to the direct costs to small entities of complying with the requirements of the proposed rule. Other impacts, such as the impacts of limitations on loans that could be made under the proposed rule, are discussed at length in part VI. The Bureau believes that, except where otherwise noted, the impacts discussed in part VI would apply to small entities.

Provisions Relating Specifically to Covered Short-Term Loans

i. Requirement To Assess Borrowers' Ability To Repay

The proposed rule would require that lenders determine that applicants for covered short-term loans have the ability to repay the loan while still meeting their major financial obligations and paying basic living expenses. In this part VII, the practice of making loans after determining that the borrower has the ability to repay the loan will be referred to as the "ATR approach." Lenders making loans using the ATR approach would need to comply with several procedural requirements when originating loans. The Bureau's assessment of the benefits, costs, and other relevant impacts on small entities of these procedural requirements are discussed below.

The Bureau believes that many lenders use automated systems when underwriting loans and would modify those systems, or purchase upgrades to those systems, to incorporate many of the procedural requirements of the ATR approach. The costs of modifying such a system or purchasing an upgrade are discussed below, in the discussion of the costs of developing procedures, upgrading systems, and training staff.

Consulting Lender's Own Records

Under the proposed rule, lenders would need to consult their own records and the records of their affiliates to determine whether the borrower had taken out any prior covered loans, or non-covered bridge loans, that were still outstanding or were repaid within the prior 30 days. To do so, a lender would need a system for recording loans that can be identified as being made to a particular consumer and a method of reliably accessing those records. The Bureau believes that lenders would most likely comply with this requirement by using computerized recordkeeping. A lender operating a single storefront would need a system of recording the loans made from that storefront and accessing those loans by consumer. A lender operating multiple storefronts or multiple affiliates would need a centralized set of records or a way of accessing the records of all of the storefronts or affiliates. A lender operating solely online would presumably maintain a single set of records; if it maintained multiple sets of records, it would need a way to access each set of records.

The Bureau believes that most small entities already have the ability to comply with this provision, with the possible exception of those with affiliates that are run as separate operations. Lenders' own business needs likely lead them to have this capacity. Lenders need to be able to track loans in order to service the loans. In addition, lenders need to track the borrowing and repayment behavior of individual consumers to reduce their credit risk, such as by avoiding lending to a consumer who has defaulted on a prior loan. And most States that allow payday lending (at least 23) have requirements that implicitly require lenders to have the ability to check their records for prior loans to a loan applicant, including limitations on renewals or rollovers or cooling-off periods between loans. Despite these various considerations, however, there may be some lenders that currently do not have the capacity to comply with this requirement.

Costs to Small Entities

Small entities that do not already have a records system in place would need to incur a one-time cost of developing such a system, which may require investment in information technology hardware and/or software. The Bureau estimates that purchasing necessary hardware and software would cost approximately $2,000, plus $1,000 for each additional storefront. The Bureau estimates that firms that already have standard personal computer hardware, but no electronic record keeping system, would need to incur a cost of approximately $500 per storefront. Lenders may instead contract with a vendor to supply part or all of the systems and training needs.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically access the lender's own records. For lenders that access their records manually, rather than through an automated origination system, the Bureau estimates that doing so will take three minutes of an employee's time.

Obtaining a Consumer Report From a Registered Information System

Under the proposed rule, small entities would have to obtain a

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[1061] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

[1062] *See, e.g.*, FDIC Financial Institution Letter FIL-14-2005, *Payday Lending Programs* (Mar. 1, 2005), *available at https://www.fdic.gov/news/news/financial/2005/fil1405.pdf*; OCC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Product, 78 FR 70624 (Nov. 26, 2013), *available at http://www.occ.treas.gov/news-issuances/federal-register/78fr70624.pdf*; FDIC, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 (Nov. 26, 2013), *available at http://www.gpo.gov/fdsys/pkg/FR-2013-11-26/pdf/2013-28306.pdf*.

consumer report from a registered information system containing information about the consumer's borrowing history across lenders, if one or more such systems were available. The Bureau believes that many lenders likely already work with firms that provide some of the information that would be included in the registered information system data, such as in States where a private third-party operates reporting systems on behalf of the State regulator or for their own risk management purposes, such as fraud detection. However, the Bureau recognizes that there also is a sizable segment of lenders making covered short-term loans who operate only in States without a State-mandated reporting system and who make lending decisions without obtaining any data from a consumer reporting agency.

Costs to Small Entities

As noted above, the Bureau believes that many small entities use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically order a report from a registered information system during the lending process. For lenders that order reports manually, the Bureau estimates that it would take approximately three minutes for a lender to request a report from a registered information system. For all lenders, the Bureau expects that access to a registered information system would be priced on a "per-hit" basis, where a hit is a report successfully returned in response to a request for information about a particular consumer at a particular point in time. Based on industry outreach, the Bureau estimates that the cost to small entities would be $0.50 per hit, based on pricing in existing specialty consumer reporting markets.

Obtaining Information and Verification Evidence About Income and Major Financial Obligations and Making Ability-to-Repay Determination

The proposed rule would require lenders to obtain information and verification evidence about the amount and timing of an applicant's net income and payments for major financial obligations, to obtain a statement from applicants describing their income and payments on major financial obligations, and to assess that information to determine whether a consumer has the ability to repay the loan.

The Bureau believes that many small entities that make covered short-term loans, such as small storefront lenders making payday loans, already obtain some information on consumers' income. Many of these lenders, however, only obtain income verification evidence the first time they make a loan to a consumer or for the first loan following a substantial break in borrowing. Other lenders, such as some vehicle title lenders or some lenders operating online, may not currently obtain income information at all, let alone verification evidence for that information, on any loans. In addition, many consumers likely have multiple income sources that are not all currently documented in the ordinary course of short-term lending. Under the proposal, consumers and lenders may have incentives to provide and gather more income information than they do currently in order to establish the borrower's ability to repay a given loan. The Bureau believes that most lenders that originate covered short-term loans do not currently collect information on applicants' major financial obligations, let alone verification evidence of such obligations, nor do they determine consumers' ability to repay a loan, as would be required under the proposed rule.

Costs to Small Entities

There are two types of costs entailed in making an ATR determination: The cost of obtaining the verification evidence and the cost of making an ATR determination consistent with that evidence.

As noted above, many lenders already use automated systems when originating loans. These lenders would likely modify those systems or purchase upgrades to those systems to automate many of the tasks that would be required by the proposal.

(a) Obtaining Verification Evidence

Under the proposed rule, small entities would be required to obtain a consumer report from a national consumer reporting agency to verify the amount and timing of payments for debt obligations. This would be in addition to the cost of obtaining a consumer report from a registered information system. Verification evidence for housing expenses may be included on an applicant's consumer report, if the applicant has a mortgage; otherwise, verification costs could consist of obtaining documentation of rent payments estimating a consumer's housing expense based on the housing expenses of similarly situated consumers with households in their area. The Bureau believes that many lenders will purchase reports from specialty consumer reporting agencies that will contain both debt information from a national consumer reporting agency and housing expense estimates. Based on industry outreach, the Bureau believes these reports will cost approximately $2.00 for small entities. As with the ordering of reports from registered information systems, the Bureau believes that many small entities would modify their loan origination system or purchase an upgrade to that system to allow the system to automatically order a specialty consumer report during the lending process at a stage in the process where the information is relevant. For lenders that order reports manually, the Bureau estimates that it would take approximately two minutes for a lender to request a report.

Small entities that do not currently collect income or verification evidence for income would need to do so. For consumers who have straightforward documentation for income and provide documentation for housing expenses, rather than relying on housing cost estimates, the Bureau estimates that gathering and reviewing information and verification evidence for income and major expenses and having a consumer sign a document listing income and major financial obligations would take roughly three to five minutes per application. Some consumers may visit a lender's storefront without the required documentation and may have income for which verification evidence cannot be obtained electronically, raising lenders' costs and potentially leading to some consumers failing to complete the loan application process, reducing lender revenue.

Small entities making loans online may face particular challenges obtaining verification evidence, especially for income. It may be feasible for online lenders to obtain scanned or photographed documents as attachments to an electronic submission; the Bureau understands that some online lenders are doing this today with success. And services that use other sources of information, such as checking account or payroll records, may mitigate the need for lenders to obtain verification evidence directly from consumers.

(b) Making Ability-to-Repay Determination

Once information and verification evidence on income and major financial obligations has been obtained, the lender would need to determine whether the consumer has the ability to repay the contemplated loan. In addition to considering the information collected about income and major financial obligations, lenders would need to estimate an amount that borrowers generally need for basic living expenses. They may do this in a number of ways, including, for example, collecting information directly from borrowers, using available estimates published by third parties, or providing for a "cushion" calculated as a percentage of income.

On an ongoing basis, the Bureau estimates that this would take roughly 10 additional minutes for lenders that use a manual process to make the ability-to-repay calculations. As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems to carry out the ability-to-repay calculations.

In total, the Bureau estimates that obtaining a statement from the consumer and verification evidence about the amount and timing of consumers' income and payments on major financial obligations, projecting the consumer's residual income, estimating the consumer's basic living expenses, and arriving at a reasonable ATR determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system, with incremental costs dependent on the existing utilization rates of and wages paid to staff that would spend time carrying out this work. Dollar costs would include a report from a registered information system costing $.50 and a specialty consumer report containing housing costs estimates costing $2; lenders relying on electronic services to gather verification information about income would face an additional small cost.

Developing Procedures, Upgrading Systems, and Training Staff

Small entities would need to develop procedures to comply with the requirements of the ATR approach and train their staff in those procedures. Many of these requirements would not appear qualitatively different from many practices that most lenders already engage in, such as gathering information and documents from borrowers and ordering various types of consumer reports.

Developing procedures to make a reasonable determination that a borrower has an ability to repay a loan without reborrowing and while paying for major financial obligations and living expenses is likely to be a challenge for many small entities. The Bureau expects that vendors, law firms, and trade associations are likely to offer both products and guidance to lenders, lowering the cost of developing procedures. Lenders, however, would also need to develop a process for estimating borrowers' basic living expenses. Some lenders may rely on vendors that provide services to determine ability to repay that include estimates of basic living expenses. For a lender to conduct an independent analysis to determine a reliable statistical estimate of basic living expenses would be quite costly. There are a number of online services, however, that provide living expense estimates that lenders may be able to use to obtain estimates or to confirm the reasonableness of information provided by loan applicants.

As noted above, the Bureau believes that many lenders use automated systems when originating loans and would incorporate many of the procedural requirements of the ATR approach into those systems. This would likely include an automated system to make the ability-to-repay determination; the calculation itself is quite straightforward and will not require substantial development costs. The Bureau believes small lenders that use automated loan origination systems rely on licensed software. Depending on the nature of the software license agreement, the Bureau estimates that the one-time cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small entities with a significant number of stores would rely on the entity-level licenses.

The Bureau estimates that lender personnel engaging in making loans would require approximately 4.5 hours of initial training in carrying out the tasks described in this section and 2.25 hours of periodic ongoing training per year.[1063]

ii. Limitations on Making Loans to Borrowers With Recent Covered Loans

The proposed rule identifies circumstances in which a presumption of unaffordability would be triggered, thereby limiting lenders' ability to make a covered short-term loan with similar payments to a consumer within 30 days of the consumer having a covered short-term loan or covered longer-term balloon-payment loan outstanding.

Because of the impact of the presumption of unaffordability for a new covered short-term loan during the term of and for 30 days following a prior covered short-term loan originated using the ATR approach, lenders would not be able to make another similar covered short-term loan to a borrower within 30 days of the prior loan unless the borrower's financial capacity had sufficiently improved since obtaining the prior loan.[1064] This improvement in the borrower's financial capacity would need to be documented.

Costs to Small Entities

Under the proposed rule, small entities making a loan using the ATR approach would need to project the borrower's residual income, and therefore that aspect of this requirement would impose no additional cost on the lender. Comparing the borrower's projected financial capacity for the new loan with the consumer's financial capacity since obtaining the prior loan would impose very little cost, as long as the same lender had made the prior loan. The lender would need to collect additional documentation to overcome the presumption of unaffordability if the lender did not make the prior loan or if the borrower's financial capacity would be better for the new loan because of the borrower's unanticipated dip in income since obtaining the prior loan that is not likely to be repeated.

iii. Alternative to the Requirement To Assess Borrowers' Ability To Repay

The proposal includes an alternative set of requirements to the ATR approach for originating certain covered short-term loans as proposed in § 1041.7. In this section, the practice of making loans by complying with the alternative requirements under proposed § 1041.7 will be referred to as the "Alternative approach."

The procedural requirements of the Alternative approach would generally have less impact on lenders than the requirements of the ATR approach. Lenders that make covered short-term loans under the Alternative approach would not have to obtain information or verification evidence about income or major financial obligations, forecast basic living expenses, complete an ability-to-repay determination, or document changed financial capacity prior to making loans that meet those requirements.

[1063] Note that the Bureau expects that this training would be combined with the training relating to furnishing loan information discussed in part VII.4(a).

[1064] The presumption would not apply in certain circumstances where the consumer has made substantial payments in the prior loan, as discussed in connection with proposed § 1041.6.

The proposed rule would instead require only that lenders making loans under § 1041.7 consult their internal records and those of affiliates, access reports from a registered information system, furnish information to registered information systems, and make an assessment as part of the origination process that certain loan requirements (such as principal limitations and borrowing history limitations) were met. The requirement to consult the lender's own records would be slightly different in duration compared to an ATR Approach loan, since the lender would need to check the records for the prior 12 months. This would be unlikely to have different impacts on the lenders, however, as any system that allows the lender to comply with the own-record checking requirements of the ATR approach should be sufficient for the Alternative approach and vice-versa. A lender would also have to develop procedures and train staff.

Disclosure Requirement

Small entities making covered short-term loans under the Alternative approach would be required to provide borrowers with a disclosure, described in the section-by-section analysis of proposed § 1041.7(e), with information about their loans and about the restrictions on future loans taken out using the Alternative approach. One disclosure would be required at the time of origination of an Alternative approach loan when a borrower had not had an Alternative approach loan within the prior 30 days. The other disclosure would be required when originating a third Alternative approach loan in a sequence because the borrower would therefore be unable to take out another Alternative approach loan within 30 days of repaying the loan being originated. The disclosures would need to be customized to reflect the specifics of the individual loan.

Costs to Small Entities

The Bureau believes that all small entities have some disclosure system in place to comply with existing disclosure requirements. Lenders may enter data directly into the disclosure system, or the system may automatically collect data from the lenders' loan origination system. For disclosures provided via mail, email, or text message, disclosure systems forward the information necessary to prepare the disclosures to a vendor in electronic form, and the vendor then prepares and delivers the disclosures. For disclosures provided in person, disclosure systems produce a disclosure that the lender then provides to the borrower. Respondents would incur a one-time cost to upgrade their disclosure systems to comply with new disclosure requirements.

The Bureau believes that small depositories and non-depositories rely on licensed disclosure system software. Depending on the nature of the software license agreement, the Bureau estimates that the cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on entity-level licenses.

In addition to the upgrades to the disclosure systems, the Bureau estimates that small storefront lenders would pay $200 to a vendor for a standard electronic origination disclosure form template.

The Bureau estimates that providing disclosures in stores would take a store employee two minutes and cost $.10.

Provisions Relating Specifically to Covered Longer-Term Loans

i. Requirement To Assess Borrowers' Ability To Repay

The proposed rule requires that lenders determine that applicants for covered longer-term loans have the ability to repay the loan while still meeting their major financial obligations and paying basic living expenses. In this section, the practice of making loans after determining that the borrower has the ability to repay the loan will be referred to as the "ATR approach." Lenders making loans using the ATR approach would need to comply with several procedural requirements when originating loans. The Bureau's assessment of the benefits, costs, and other relevant impacts on small entities of these procedural requirements are discussed below.

The Bureau believes that many lenders use automated systems when underwriting loans and would modify those systems, or purchase upgrades to those systems, to incorporate many of the procedural requirements of the ATR approach. The costs of modifying such a system or purchasing an upgrade are discussed below, in the discussion of the costs of developing procedures, upgrading systems, and training staff.

Consulting Lender's Own Records

Under the proposed rule, lenders would need to consult their own records and the records of their affiliates to determine whether the borrower had taken out any prior recent covered loans or non-covered bridge loan and, if so, the timing of those loans, as well as whether a borrower currently has an open loan and has demonstrated difficulty repaying the loan. To do so, a lender would need a system for recording loans that can be identified as being made to a particular consumer and a method of reliably accessing those records. The Bureau believes that lenders would most likely comply with this requirement by using computerized recordkeeping. A lender operating a single storefront would need a system of recording the loans made from that storefront and accessing those loans by consumer. A lender operating multiple storefronts or multiple affiliates would need a centralized set of records or a way of accessing the records of all of the storefronts or affiliates. A lender operating solely online would presumably maintain a single set of records; if it maintained multiple sets of records it would need a way to access each set of records.

The Bureau believes that most small entities making covered longer-term loans already have the ability to comply with this provision, with the possible exception of those with affiliates that are run as separate operations. Lenders' own business needs likely lead them to have this capacity. Lenders need to be able to track loans in order to service the loans. In addition, lenders need to track the borrowing and repayment behavior of individual consumers to reduce their lending risk, such as by avoiding lending to a consumer who has defaulted on a prior loan. There may be some lenders, however, that currently do not have the capacity in place to comply with this requirement.

Costs to Small Entities

Small entities that do not already have a records system in place would need to incur a one-time cost of developing such a system, which may require investment in information technology hardware and/or software. The Bureau estimates that purchasing necessary hardware and software would cost approximately $2,000, plus $1,000 for each additional storefront. For firms that already have standard personal computer hardware, but no electronic record keeping system, the Bureau estimates that the cost would be approximately $500 per storefront. Lenders may instead contract with a vendor to supply part or all of the systems and training needs.

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify those systems or purchase upgrades to those systems such that they would automatically access the lender's own records. For lenders that access their records manually, rather than through an automated loan origination system, the Bureau estimates that doing so will take three minutes of an employee's time.

Obtaining a Consumer Report From a Registered Information System

Under the proposed rule, small entities would have to obtain a consumer report from a registered information system containing information about the consumer's borrowing history across lenders, if one or more such systems were available.

Costs to Small Entities

As noted above, the Bureau believes that many lenders use automated loan origination systems and would modify or purchase upgrades to those systems such that they automatically order a consumer report from a registered information system during the lending process. For lenders that order reports manually, the Bureau estimates that it would take approximately three minutes for a lender to request a report from a registered information system. The Bureau expects that access to a registered information system would be priced on a "per-hit" basis, where a hit is a report successfully returned in response to a request for information about a particular consumer at a particular point in time. The Bureau estimates that the cost would be $0.50 per hit, based on pricing in existing specialty consumer reporting markets.

Obtaining Information and Verification Evidence about Income and Major Financial Obligations and Making Ability-to-Repay Determination

The proposed rule requires lenders making loans under the ATR approach to obtain information and verification evidence about the amount and timing of an applicant's income and payments for major financial obligations, to obtain a statement from applicants describing their income and payments for major financial obligations, and to assess that information to determine whether a consumer has the ability to repay the loan.

The Bureau understands that the underwriting practices of lenders that originate loans that would be covered longer-term loans vary substantially. The Bureau believes that many small entities that make covered longer-term loans already obtain some information and verification evidence about consumers' incomes, but that some, such as some vehicle title lenders or some lenders operating online, do not do so for some or all of the loans they originate. And some lenders, such as consumer finance installment lenders who make some covered longer-term loans and some newer entrants to this market, have underwriting practices that may satisfy—or satisfy with minor changes, such as obtaining housing cost estimates—the requirements of the proposed rule. Other lenders, however, do not collect information or verification evidence on applicants' major financial obligations or determine consumers' ability to repay a loan in the manner contemplated by this proposal.

Costs to Small Entities

There are two types of costs entailed in making an ATR determination: the cost of obtaining the information and verification evidence and the cost of making an ATR assessment consistent with that information and evidence.

As noted above, many lenders already use automated systems when originating loans. These lenders would likely modify those systems or purchase upgrades to those systems to automate many of the tasks that would be required by the proposal.

(a) Obtaining Verification Evidence

Small entities would be required to obtain a consumer report to verify the amount and timing of borrowers' payments on debt obligations. This would be in addition to the cost of obtaining a consumer report from a registered information system. Verification evidence for housing expenses may be included on an applicant's consumer report if the applicant has a mortgage; otherwise, verification costs could consist of obtaining documentation of actual rent or creating a tool to estimate a consumer's housing expense based on the housing expenses of similarly situated consumers with households in their area. The Bureau believes that most small entities will purchase reports from specialty consumer reporting agencies that will contain both debt information from a national consumer reporting agency and housing expense estimates. Based on industry outreach, the Bureau believes these reports will cost approximately $2.00 for small entities. As with the ordering of reports from registered information systems, the Bureau believes that many small entities would modify their automated loan origination system or purchase an upgrade to the system to enable the system to automatically order a specialty consumer report during the lending process. For small entities that order reports manually, the Bureau estimates that it would take approximately two minutes for a lender to request a report.

Small entities that do not currently collect income or verification evidence for income would need to do so. For lenders that use a manual process for consumers who have straightforward documentation for income and provide documentation for housing expenses, rather than relying on housing cost estimates, the Bureau estimates that gathering and reviewing information and verification evidence for income and major financial obligations would take roughly three to five minutes per application. Some consumers may visit a lender's storefront without the required documentation and may have income for which verification evidence cannot be obtained electronically, raising lenders' costs and potentially leading to some consumers failing to complete the loan application process, reducing lender revenue.

Small entities making loans online may face particular challenges obtaining verification evidence, especially for income. It may be feasible for online lenders to obtain scanned or photographed documents as attachments to an electronic submission. And, services that use other sources of information, such as checking account or payroll records, may mitigate the need for lenders to obtain verification evidence directly from consumers.

(b) Making Ability-to-Repay Determination

Once information and verification evidence on income and major financial obligations has been obtained, the lender would need to make a reasonable determination whether the consumer has the ability to repay the contemplated loan. In addition to considering the information collected about income and major financial obligations, lenders would need to estimate an amount that borrowers generally need for basic living expenses. They may do this in a number of ways, including, for example, collecting information directly from borrowers, using available estimates published by third parties, or providing for a "cushion" calculated as a percentage of income.

The time it takes to complete this review will depend on the method used by the lender. Making the determination would be essentially instantaneous for lenders using automated systems. The Bureau estimates that this would take roughly 10 additional minutes for lenders that use a manual process to make these calculations.

In total, the Bureau estimates that obtaining information and verification evidence about consumers' income and major financial obligations and arriving at a reasonable ATR determination would take essentially no time for a fully automated electronic system and between 15 and 20 minutes for a fully manual system, with total costs dependent on the existing utilization rates of and wages paid to staff that would spend time carrying out this work. Dollar costs would include a report from a registered information system costing $0.50 and a specialty consumer report containing housing costs estimates that would cost $2.00; lenders relying on electronic services to gather verification information about income would face an additional small cost.

Developing Procedures, Upgrading Systems, and Training Staff

Small entities would need to develop procedures to comply with the requirements of the ATR approach and train their staff in those procedures. Many of these requirements would not appear qualitatively different than many practices that most lenders already engage in, such as gathering information and documents from borrowers and ordering various types of consumer reports.

Developing procedures to make a reasonable determination that a borrower has an ability to repay a loan while paying for major financial obligations and basic living expenses is likely to be a challenge for many lenders. The Bureau expects that vendors, law firms, and trade associations are likely to offer both products and guidance to lenders, lowering the cost of developing procedures. Lenders would also need to develop a process for estimating borrowers' basic living expenses. Some lenders may rely on vendors that provide services to determine ability to repay that include estimates of basic living expenses. For a lender to conduct an independent analysis to determine a reliable statistical estimate of basic living expenses would be quite costly. There are a number of online services, however, that provide living expense estimates that lenders may be able to use to obtain estimates or to confirm the reasonableness of information provided by loan applicants.

As noted above, the Bureau believes that many lenders use automated systems when originating loans and would incorporate many of the procedural requirements of the ATR approach into those systems. This would likely include an automated system to make the ability-to-repay determination; subtracting the component expense elements from income itself is quite straightforward and will not require substantial development costs. The Bureau believes that small lenders that use automated loan origination systems rely on licensed software. Depending on the nature of the software license agreement, the Bureau estimates that the cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small lenders with a significant number of stores would rely on the entity-level licenses.

The Bureau estimates that lender personnel engaging in making loans would require approximately 4.5 hours of initial training in carrying out the tasks described in this section and 2.25 hours of periodic ongoing training per year.

ii. Limitations on Making Loans to Borrowers With Recent Covered Loans

The proposed rule identifies a set of circumstances in which a presumption of unaffordability would be triggered, thereby limiting lenders' ability to make a covered longer-term loan with similar payments to a consumer within 30 days of the consumer having a covered short-term loan or covered longer-term balloon-payment loan outstanding.

Under the proposed rule, lenders would not be able to make a covered longer-term loan during the term of and for 30 days following a prior covered short-term loan or covered longer-term balloon-payment loan unless the borrower's financial capacity has sufficiently improved or payments on the new loan would be substantially smaller than payments on the prior loan. This situation is unlikely to occur frequently, as a covered longer-term loan would normally have payments that are substantially smaller than the payment for a covered short-term loan or the balloon payment of a covered longer-term balloon-payment loan. It could arise, however, if the new loan were for a substantially larger amount than the prior loan, or if the new loan had only a slightly longer term than the prior loan (for example, a 46-day three-payment loan following a 45-day three-payment loan). Specifically, the loan could not be made unless (1) the borrower's projected residual income with respect to the new loan were higher than the borrower's actual residual income was during the prior 30 days, or (2) the borrower's projected residual income for the new loan was higher than the projected residual income at the time the first loan was made. This improvement in financial capacity would need to be documented using the same general kinds of verification evidence that lenders would need to collect as part of the underlying assessment of the consumer's ability to repay.

Costs to Small Entities

Under the proposed rule, small entities making a loan using the ATR approach would need to project the borrower's financial capacity, and therefore that aspect of this requirement would impose no additional cost on the lender. Comparing the borrower's projected financial capacity for the new loan with the consumer's projected financial capacity since obtaining the prior loan (or during the prior 30 days for an unaffordable outstanding loan) would impose very little cost, as long as the same lender had made the prior loan. If the lender did not make the prior loan or if the borrower's financial capacity would be better for the new loan because of an unanticipated dip in income or increase in major financial obligations since obtaining the prior loan, the lender would need to collect additional documentation to overcome the presumption of unaffordability.

iii. Alternatives to the Requirement To Assess Borrowers' Ability To Repay

The proposal includes several alternative requirements to the ATR approach for making covered longer-term loans proposed in §§ 1041.11 and 1041.12. In this section, the practice of making loans with a low portfolio default rate and other restrictions, as described in the section-by-section analysis of proposed § 1041.11, will be referred to as the "Portfolio approach." The practice of making loans that share certain features of loans made pursuant to the NCUA PAL program, with certain additional restrictions, as described in § 1041.12 will be referred to as the "PAL approach."

The Bureau believes that most covered longer-term loans would be made using the ATR approach. The Portfolio approach and the PAL approach would each allow some lenders to originate covered longer-term loans without undertaking all of the requirements of the ATR approach. The impacts of these alternative approaches are primarily discussed relative to the impacts of the ATR approach. As noted above, however, the overall impacts of the rule are still being evaluated relative to a baseline of the existing Federal and State legal, regulatory, and supervisory regimes in place as of the time of the proposal.

(a). Portfolio Approach

To qualify for the Portfolio approach, a lender would need to make loans with a modified total cost of credit of 36 percent or below and could exclude from the calculation of the modified total cost of credit a single origination fee that represents a reasonable proportion of the lender's cost of underwriting loans made pursuant to this exemption, with a safe harbor for a fee that does not exceed $50. Among other limitations, loans would also need to be at least 46 days long and no more than 24 months long, have substantially equal and amortizing payments due at regular intervals, and not have a prepayment penalty. Finally, a lender's portfolio of loans originated using the Portfolio approach would need to have a portfolio default rate, as defined in proposed § 1041.12(d) and (e), less than or equal to 5 percent per year. If the portfolio default rate were to exceed 5 percent, the lender would be required to refund the origination fees on the loans originated during that period. Consumers could not be indebted on more than two outstanding loans made under this exemption from a lender or its affiliates within a period of 180 days.

Small entities making loans using the Portfolio approach would be required to conduct underwriting, but would have the flexibility to determine what underwriting to undertake consistent with the provisions in proposed § 1041.12. They would not be required to gather information or verification evidence on borrowers' income or major financial obligations nor determine that the borrower has the ability to repay the loan while paying major financial obligations and paying basic living expenses. They would also not be required to obtain a consumer report from a registered information system. Moreover, they would have the option of furnishing information concerning the loan either to each registered information system or to a national consumer reporting agency. They would also not be required to provide the payment notice, the costs and benefits of which are described below.

Costs to Small Entities

Small entities with very low portfolio default rates would still incur some costs to use the Portfolio approach. They would be required to break out covered longer-term loans from the rest of their personal lending activity and calculate the covered portfolio default rate. If that rate exceeded 5 percent, they would bear the costs of making refunds. Because of the risk of having to refund borrowers' origination fees, lenders would be likely to seek to maintain a portfolio default rate lower than 5 percent so as to limit the risk that an unexpected increase in the portfolio default rate, such as from changing local or national economic conditions, does not push the portfolio default rate above 5 percent.

The Portfolio approach would also limit the number of loans that a small entity could make because prior to making a Portfolio approach loan, a lender must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than two outstanding Portfolio approach loans from the lender or its affiliates within a period of 180 days.

(b). PAL Approach

To qualify for the PAL approach, a loan could not carry a total cost of credit of more than the cost permissible for Federal credit unions to charge under regulations issued by the NCUA. NCUA permits Federal credit unions to charge an interest rate of 1,000 basis points above the maximum interest rate established by the NCUA Board (currently, the applicable annualized interest rate is 28 percent) and an application fee of not more than $20. Among other requirements, the loan would need to be structured with a term of 46 days to six months, with substantially equal and amortizing payments due at regular intervals and no prepayment penalty. The minimum and maximum loan size would be $200 and $1,000, respectively.

Small entities making loans under the PAL approach would be required to maintain and comply with policies and procedures for documenting proof of recurring income, but would not be required to gather other information or engage in underwriting beyond any underwriting the lender undertakes for its own purposes. They would also not be required to obtain a consumer report from a registered information system. Moreover, they would have the option of furnishing information concerning the loan either to each registered information system or to a national consumer reporting agency. They would also not be required to provide the payment notice.

Costs to Small Entities

The only costs to small entities would be those associated with furnish information, which are discussed above in part VII.4(a).

Provisions Relating to Payment Practices and Related Notices

The proposed rule would limit how payments on a covered loan are initiated from a borrower's checking, savings, or prepaid account and impose two notice requirements relating to those payments. The impacts of these provisions are discussed here for all covered loans.

Note that the Bureau believes that the proposed requirement to assess ATR before making a covered loan or to comply with one of the conditional exemptions would reduce the frequency with which borrowers receive loans that they do not have the ability to repay. This should make unsuccessful payment withdrawal attempts less frequent, and lessen the impacts of the limitation on payment withdrawal attempts and the requirement to notify consumers when a lender would no longer be permitted to attempt to withdraw payments from a borrower's account.

i. Limitation on Payment Withdrawal Attempts

The proposed rule would prevent lenders from attempting to withdraw payment from a consumer's deposit or prepaid account if two consecutive prior payment attempts made through any channel are returned for nonsufficient funds. The lender could resume initiating payment if the lender obtained from the consumer a new authorization to collect payment from the consumer's account.

Cost to Small Entities

The impact of this restriction depends on how often the lender attempts to collect from a consumers' account after more than two consecutive failed transactions and how often they are successful in doing so. Based on industry outreach, the Bureau understands that some small entities already have a practice of not continuing to attempt to collect using these means after one or two failed attempts. These lenders would not incur costs from the proposal.

The Bureau notes that under the proposed restriction, lenders still could seek payment from their borrowers, including by obtaining a new and specific authorization to collect payment from a borrower's account or by engaging in other lawful collection practices, and so the preceding estimate represents a high-end estimate of the impact of the restriction on the payments that would not be collected by these particular lenders if the proposed restriction were in place. These other forms of lawful collection practices, however, may be more costly for lenders than attempting to collect directly from a borrower's account.

If, after two consecutive failed attempts, a lender chooses to seek a new authorization to collect payment from a consumer's account, the lender would have to contact the consumer.[1065] The Bureau believes that this would most often be done in conjunction with general collections efforts and would impose little additional cost on lenders.

To the extent that lenders assess returned item fees when an attempt to collect a payment fails and lenders are subsequently able to collect on those fees, this proposal may reduce lenders' revenue from those fees.

Small entities would also need the capability of identifying when two consecutive payment requests have failed. The Bureau believes that the systems small entities use to identify when a payment is due, when a payment has succeeded or failed, and whether to request another payment would have the capacity to identify when two consecutive payments have failed, and therefore this requirement would not impose a significant new cost.

ii. Required Notice Prior To Attempt To Collect Directly From a Borrower's Account

The proposal would require lenders to provide consumers with a notice prior to every lender-initiated attempt to withdraw payment from consumers' accounts, including ACH entries, post-dated signature checks, remotely created checks, remotely created payment orders, and payments run through the debit networks. The notice would be required to include the date the lender will initiate the payment request, the payment channel, the amount of the payment, the breakdown of that amount to principal, interest, and fees, the loan balance remaining if the payment succeeds, the check number if the payment request is a signature check or RCC, and contact information for the consumer to reach the lender. There would be separate notices prior to regular scheduled payments and prior to unusual payments. The notice prior to a regular scheduled payment would also include the APR of the loan.

This provision would not apply to lenders making covered longer-term loan under the Portfolio or PAL approach.

Costs to Small Entities

The costs to small entities of providing these notices would depend heavily on whether they are able to provide the notice via email or text messages or would have to send notices through paper mail. As discussed in the section-by-section analysis of § 1041.15, most borrowers are likely to have internet access or a mobile phone capable of receiving text messages, and during the SBREFA process multiple SERs reported that most borrowers, when given the opportunity, opt in to receiving notifications via text message.

The Bureau believes that small entities that would be affected by the new disclosure requirements have some disclosure system in place to comply with existing disclosure requirements, such as those imposed under Regulation Z, 12 CFR part 1026 and Regulation E, 12 CFR part 1005. Lenders enter data directly into the disclosure system or the system automatically collects data from the lenders' loan origination system. For disclosures provided via mail, email, or text message, the disclosure system often forwards to a vendor, in electronic form, the information necessary to prepare the disclosures, and the vendor then prepares and delivers the disclosures. Lenders would incur a one-time burden to upgrade their disclosure systems to comply with new disclosure requirements.

Lenders would need to update their disclosure systems to compile necessary loan information to send to the vendors that would produce and deliver the disclosures relating to payments. The Bureau believes small depositories and non-depositories rely on licensed disclosure system software. Depending on the nature of the software license agreement, the Bureau estimates that the cost to upgrade this software would be $10,000 for lenders licensing the software at the entity-level and $100 per seat for lenders licensing the software using a seat-license contract. For lenders using seat license software, the Bureau estimates that each location for small lenders has on average three seats licensed. Given the price differential between the entity-level licenses and the seat-license contracts, the Bureau believes that only small entities with a significant number of stores would rely on the entity-level licenses.

Small entities with disclosure systems that do not automatically pull information from the lenders' loan origination or servicing system will need to enter payment information into the disclosure system manually so that the disclosure system can generate payment disclosures. The Bureau estimates that this will require two minutes per loan. Lenders would need to update this information if the scheduled payments were to change.

For disclosures delivered through the mail, the Bureau estimates that vendors would charge two different rates, one for high volume mailings and another for low volume mailings. The Bureau understands that small entities will likely generate a low volume of mailings and estimates vendors would charge such lenders $1.00 per disclosure. For disclosures delivered through email, the Bureau estimates vendors would charge $0.01 to create and deliver each email such that it complies with the requirements of the proposed rule. For disclosures delivered through text message, the Bureau estimates vendors would charge $0.08 to create and deliver each text message such that it complies with the requirements of the proposed rule. The vendor would also need to provide a Web page where the full disclosure linked to in the text message would be provided. The cost of providing this web disclosure is included in the cost estimate of providing the text message.

iii. Required Notice When Lender Could No Longer Collect Directly From a Borrower's Account

The proposal would require a lender that has made two consecutive unsuccessful attempts to collect payment directly from a borrower's account to provide a borrower, within three business days of learning of the second unsuccessful attempt, with a consumer rights notice explaining that the lender is no longer able to attempt to collect payment directly from the borrower's account, along with information identifying the loan and a record of the two failed attempts to collect funds.

Costs to Small Entities

The requirement would impose on small entities the cost of providing the notice. Lenders would already need to track whether they can still attempt to collect payments directly from a borrower's account, so identifying which borrowers should receive the notice would not impose any additional cost on lenders. And the Bureau expects that lenders will normally attempt to contact borrowers in these circumstances to identify other means of obtaining payment. If they are contacting the consumer via mail, the lender will be able to include the required notice in that mailing.

[1065] Note that, as described below, lenders would be required to provide a notice to the borrower in this circumstance, regardless of whether the lender were attempting to obtain a new authorization.

The Bureau expects that small entities will incorporate the ability to provide this notice into their payment notification process. The Bureau estimates that vendors would charge $1.00 per notice for small entities that send a small volume of mailing. For disclosures delivered through email, the Bureau estimates vendors would charge $0.01 to create and deliver each email such that it complies with the requirements of the proposed rule. For disclosures delivered through text message, the Bureau estimates vendors would charge $0.08 to create and deliver each text message. The vendor would also need to provide a Web page where the full disclosure linked to in the text message would be provided. The cost of providing this web disclosure is included in the cost estimate of providing the text message.

Costs of Possible Lender Responses to Major Proposed Provisions

Most of the costs associated with the procedural requirements of the proposed rule are per-loan (or per-application) costs, what economists refer to as "marginal costs." Standard economic theory predicts that marginal costs will be passed through to consumers, at least in part, in the form of higher prices. Many covered loans, however, are being made at prices equal to caps that are set by State law or State regulation; lenders operating in States with binding price caps will not be able to recoup those costs through higher prices. While the sections above outline both the limitations on lending and procedural costs of complying with the major provisions of the proposed rule, the overall impacts of the proposal will depend in part on how and to what extent lenders respond to the major proposed provisions. For instance, lenders may respond by changing loan terms to better fit the proposed regulatory structure or by expanding or shifting the products they offer; to the extent that lenders are able to make these and other such changes, it will mitigate their revenue losses. Possible lender responses to the major proposed provisions are discussed for both covered short-term loans and covered long-term loans in turn below.

i. Possible Responses by Small Entities Making Covered Short-Term Loans

Small entities may respond to the requirements and restrictions in the proposed rule by adjusting the costs and features of particular short-term loans or by changing the range of products that they offer. If lenders are able to make these changes, it will mitigate their revenue losses. In particular, lenders may mitigate their revenue loses by modifying loan terms—for instance by offering a smaller loan or, if allowed in the State where the lender operates, a payment schedule with comparable APR but a longer repayment period—to satisfy the ability to repay requirement or they may make broader changes to the range of products that they offer, shifting to longer-term, lower-payment installment loans, where these loans can be originated profitably and where legally permitted by State law.[1066] If those loans were covered longer-term loans, lenders would be required to comply with the provisions of the proposal that relate to those loans.

Making changes to individual loans and to overall product offerings would impose some costs on small entities; these changes and their associated costs are discussed in detail in part VI.F.1(c).

ii. Possible Responses by Small Entities Making Covered Longer-Term Loans

Small entities may respond to the requirements and restrictions in the proposed rule by adjusting the costs and features of particular longer-term loans, by lowering the overall total cost of credit to avoid coverage, or by forgoing account access or security interest in a vehicle. If they are able to make these changes, it will mitigate their revenue losses. In particular, lenders may mitigate their revenue losses by modifying loan terms through some combination of reducing the size of the loan, lowering the cost of the loan, or extending the term of the loan. The latter approach could, however, require the lender to build in a larger cushion to account for the increased risk of income volatility. *See* the section-by-section analysis of proposed § 1041.9(b). For some lenders that make loans that are only slightly above the 36 percent coverage threshold to qualify as a covered longer-term loan, they may also choose to reduce origination fees, set a minimum loan size or minimum term, or defer the sale of add-on products until after the loan is originated if doing so would bring the total cost of credit below 36 percent. Some lenders may also shift to making loans without taking the security interest in a vehicle or to forgo ACH authorizations, post-dated checks, or other leveraged payment mechanisms rather than make covered loans.

Making changes to individual loans and to overall product offerings would impose some costs on small entities; these changes and their associated costs are discussed in detail in Section VI.G.1(a).

d. Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau does not anticipate that, except in certain rare circumstances, any professional skills will be required for recordkeeping and other compliance requirements of this proposed rule that are not otherwise required in the ordinary course of business of the small entities affected by the proposed rule. Part VII.4(b) and VII.4(c) summarize the recordkeeping and compliance requirements of the proposed rule that would affect small entities.

As discussed above, the Bureau believes that vendors will update their software and provide small creditors with the ability to retain the required data. The one situation in which a small entity would require professional skills that are not otherwise required in the ordinary course of business would be if a small creditor does not use computerized systems to store information relating to originated loans and therefore will either need to hire staff with the ability to implement a machine-readable data retention system or contract with one of the vendors that provides this service. The Bureau believes that the small entities will otherwise have the professional skills necessary to comply with the proposed rule.

The Bureau believes efforts to train small entity staff on the updated software and compliance systems would be reinforcing existing professional skills sets above those needed in the ordinary course of business. In addition, although the Bureau acknowledges the possibility that certain small entities may have to hire additional staff as a result of certain aspects of the proposed rule, the Bureau has no evidence that such additional staff will have to possess a qualitatively different set of professional skills than small entity staff employed currently. The Bureau presumes that additional staff that small entities may need to hire would generally be of the same professional skill set as current staff.

[1066] An analysis by researchers affiliated with a specialty consumer reporting agency estimated that roughly half of storefront payday borrowers could demonstrate ability to repay a longer-term loan with similar size and APR to their payday loan, but noted that these loans would not be permitted in a number of States because of State lending laws and usury caps. nonPrime101, *Report 8: Can Storefront Payday Borrowers Become Installment loan Borrowers?*, at 5 (2015), *https://www.nonprime101.com/blog/can-storefront-payday-borrowers-become-installment-loan-borrowers/*.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The proposed rule would impose additional requirements on certain forms of credit that are currently subject to the Federal consumer financial laws. In addition to the Dodd-Frank Act, several other Federal laws regulate certain matters related to the extension, servicing, and reporting of credit that would be covered by the proposals under consideration by the Bureau: These laws are described below. However, consistent with the findings of the Small Business Review Panel, the Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

The Truth in Lending Act, implemented by the Bureau's Regulation Z, establishes, among other conditions on extensions of credit, disclosure requirements for credit extended primarily for personal, family, or household purposes.[1067] The Electronic Fund Transfer Act, implemented by the Bureau's Regulation E, establishes rights, liabilities, and responsibilities related to electronic funds transfers.[1068] The requirements and protections of Regulation E apply to transfers of funds initiated through electronic means that authorize a financial institution to debit or credit a consumer's account. The Fair Credit Reporting Act and its implementing regulation, Regulation V, create a regulatory framework for furnishing, use, and disclosure of information in reports associated with credit, insurance, employment, and other decisions made about consumers.[1069] The Military Lending Act limits certain terms on extensions of consumer credit, defined by the Department of Defense's regulation, to members of the active-duty military and their dependents.[1070] Among other protections, the Military Lending Act limits the cost a lender may charge on an extension of credit to a servicemember or dependent to 36 percent MAPR. The Department of Defense's regulation establishes the cost elements that must be included in the calculation of the MAPR. Finally, the Federal Credit Union Act, implemented by the NCUA, permits Federal credit unions to extend credit to members and establishes the maximum rate of interest that Federal credit unions may charge on such loans.[1071] The NCUA's regulation permits Federal credit unions to charge a higher rate on certain specified "Payday Alternative Loans" and sets out the criteria for such loans.[1072]

6. Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Section 603(c) of the RFA requires that Bureau to describe in the IRFA any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[1073] In developing the proposed rule, the Bureau has considered several alternatives and believes that none of the alternatives, discussed below, would accomplish the stated objectives of the applicable provisions of Title X of the Dodd-Frank Act while minimizing the impact of the proposed rule on small entities. In this section, the major alternatives are briefly described and their impacts relative to the proposed provisions are discussed below. The proposals discussed here are:

1. Limits on reborrowing of covered short-term loans without an ability-to-repay requirement
2. An ATR requirement for covered short-term loans with no Alternative approach
3. Disclosures as an alternative to the ability-to-repay requirement
4. Limitations on withdrawing payments from borrowers' account without associated disclosures

In addition to the major alternatives outlined above, the Bureau has considered and solicits comment on numerous alternatives to specific provisions of the proposed rule, discussed in detail in the section-by-section analysis of each corresponding section.

i. Limits on Reborrowing of Covered Short-Term Loans Without an Ability-To-Repay Requirement

As an alternative to the proposed ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 for covered short-term loans, the Bureau considered a limitation on the overall number of covered short-term loans that a consumer could take in a loan sequence or within a short period of time. This alternative would limit consumer injury from extended periods of reborrowing on covered short-term loans. However, as discussed further in part VI.J.1, the Bureau believes that a limitation on reborrowing without a requirement to determine the consumer's ability to repay the loan would not provide sufficient protection against consumer injury from making a covered short-term loan without reasonably determining that the consumer will have the ability to repay the loan. Accordingly, the Bureau does not believe that a limitation on repeat borrowing alone would be consistent with the stated objectives of Title X to identify and prevent unfair, deceptive, or abusive acts or practices.

ii. An ATR Requirement for Covered Short-Term Loans With No Alternative Approach

The Bureau considered proposing the ability-to-repay requirements in §§ 1041.5 and 1041.6 for covered short-term loans without proposing the alternative set of requirements for originating certain covered short-term loans as proposed in § 1041.7. In the absence of the Alternative approach, lenders would be required to make a reasonable determination that a consumer has the ability to repay a loan and to therefore incur the costs associated with the ability-to-repay requirements for every covered short-term loan that they originate. However, the Bureau believes that the Alternative approach would provide sufficiently strong screening and structural consumer protections while reducing the compliance burdens associated with the ATR approach on lenders and permitting access to less risky credit for borrowers for whom it may be difficult for lenders to make a reasonable determination that the borrower has the ability to repay a loan, but who may nonetheless have sufficient income to repay the loan and also meet other financial obligations and basic living expenses. Accordingly, the Bureau believes that providing the Alternative approach as described in proposed § 1041.7 would help minimize the economic impact of the proposed rule on small entities without undermining consumer protections in accordance with the stated objectives of Title X to identify and prevent unfair, deceptive, or abusive acts or practices.

[1067] 12 CFR part 1026.

[1068] 12 CFR part 1005.

[1069] 15 U.S.C. 1681 *et seq.*; 12 CFR part 1022.

[1070] 32 CFR part 232.

[1071] 12 CFR 701.21.

[1072] 12 CFR 701.21(c)(7)(iii).

[1073] 5 U.S.C. 603(c).

iii. Disclosures as an Alternative to the Ability-To-Repay Requirement

As an alternative to substantive regulation of the consumer credit transactions that would be covered by the proposed rule, the Bureau considered whether enhanced disclosure requirements would prevent the consumer injury that is the focus of the proposed rule and minimize the impact of the proposal on small entities. In particular, the Bureau considered whether the disclosures required by some States would accomplish the stated objectives of Title X of the Dodd-Frank Act. The Bureau is proposing in proposed §§ 1041.7, 1041.14, and 1041.15 to require lenders to make specific disclosures in connection with certain aspects of a transaction.

Analysis by the Bureau indicates that a disclosure-only approach would have substantially less impact on the volume of covered short-term lending, but also would have substantially less impact on the harms consumers experience from long sequences of payday and single-payment vehicle title loans, as discussed further in part VI.J.3. Because the Bureau believes that disclosures alone would be ineffective in warning borrowers of those risks and preventing the harms that the Bureau seeks to address with the proposal, the Bureau is not proposing disclosure as an alternative to the ability-to-repay and other requirements of the proposed rule.

iv. Limitations on Withdrawing Payments From Borrowers' Account Without Associated Disclosures

The Bureau considered including the prohibition on lenders attempting to collect payment from a consumer's accounts when two consecutive attempts have been returned due to a lack of sufficient funds in proposed § 1041.14 unless the lender obtains a new and specific authorization, but not including the required disclosures of upcoming payment withdrawals (both usual and unusual payments) or the notice by lenders to consumers alerting them to the fact that two consecutive withdrawal attempts to their account have failed and the lender could therefore no longer continue to attempt to collect payments from a borrower account. This alternative would reduce the one-time costs of upgrading their disclosure systems as well as the incremental burden to lenders of providing each disclosure. The Bureau believes that in the absence of the disclosures, however, consumers face an increased risk of injury from adverse consequences of lenders initiating payment transfers, especially in situations in which lenders intend to initiate a withdrawal in a way that deviates from the loan agreement or prior course of conduct between the parties, and of believing that they are required to provide lenders with a new authorization to continue to withdraw payments directly from their accounts when they may be better off using some alternative method of payment.

v. Exemption for Small Entities

Consistent with the RFA and the Small Business Review Panel Report, the Bureau considered providing a whole or partial exemption for small entities from the requirements of the proposed rule. In particular, the Bureau examined whether small businesses in the affected markets are engaged in meaningfully different lending practices than are larger businesses in these markets. As part of the SBREFA Process and in ongoing outreach, the Bureau heard directly from small businesses about their loan origination and servicing practices. Among other feedback, the SERs provided the Bureau with information about the extent to which these lenders rely heavily on consumers who regularly take out long sequences of short-term loans. Similarly, a study submitted by several of the SERs purports to support their claim that a limit of three covered short-term loans in a sequence would cause a significant decrease in revenue and profit for their businesses.[1074] Accordingly, the Bureau does not have reason to believe that small businesses are engaged in meaningfully different lending practices; in light of these circumstances, the Bureau does not believe that such that an exemption from the requirements of the proposed rule would be consistent with the objectives of Title X of the Dodd-Frank Act.

7. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the SBREFA process concerning any projected impact of the proposed rule on the cost of credit for small entities.[1075] The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel Outreach Meeting regarding the potential impact on the cost of business credit because, as small financial service providers, the SERs could provide valuable input on any such impact related to the proposed rule.[1076]

At the Small Business Review Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[1077] The questions were focused on two areas. First, the SERs were asked whether, and how often, they extend to their customers covered loans to be used primarily for personal, family, or household purposes but that are used secondarily to finance a small business, and whether the proposals then-under consideration would result in an increase in their customers' cost of credit. Second, the Bureau inquired as to whether the proposals under consideration would increase the SERs' cost of credit.

In general, some of the SERs expressed concern that the proposals under consideration would have a substantial impact on the cost of business credit, both by making their businesses less credit worthy and by reducing access to credit for their customers that are using loans to fund small business operations.

As discussed in the Small Business Review Panel Report, the Panel recommended that the Bureau cover only loans extended primarily for personal, family, or household purposes. *See* Small Business Review Panel Report, at 33. Proposed § 1041.3(b) specifies that the proposed rule would apply only to loans that are extended to consumers primarily for personal, family, or household purposes. Loans that are made primarily for a business, commercial, or agricultural purpose would not be subject to this part. The Bureau recognizes that some covered loans may be used in part or in whole to finance small businesses, both with and without the knowledge of the lender. The Bureau also recognizes that the proposed rules will impact the ability of some small entities to access business credit themselves. In developing the proposed rule, the Bureau has considered alternatives and believes that none of those alternatives considered would achieve the statutory objectives while minimizing the cost of credit for small entities.

[1074] Charles River Associates, *Economic Impact on Small Lenders of the Payday Lending Rules Under Consideration by the CFPB* (2015), *available at http://www.crai.com/publication/economic-impact-small-lenders-payday-lending-rules-under-consideration-cfpb.*

[1075] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel with respect to the SBREFA process pursuant to section 609(b)(1) of the RFA.

[1076] *See* 5 U.S.C. 603(d)(2)(B).

[1077] *See Small Business Review Panel Report,* at 25.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are generally required to seek approval from the OMB for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the new information collection requirements in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This helps ensure that: The public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA: (1) Development, implementation, and continued use of notices for covered short-term loans made under § 1041.7, upcoming payment notices (including unusual payment notices), and consumer rights notices; (2) obtaining a consumer report from a registered information system; (3) furnishing information about consumers' borrowing behavior to each registered information system; (4) retrieval of borrowers' national consumer report information; (5) collection of consumers' income and major financial obligations during the underwriting process; (6) obtaining a new and specific authorization to withdraw payment from a borrower's deposit account after two consecutive failed payment transfer attempts; (7) application to be a registered information system; (8) biennial assessment of the information security programs for registered information systems; (9) retention of loan agreement and documentation obtained when making a covered loan, and electronic records of origination calculations and determination, records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability, loan type and term, and payment history and loan performance.

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to (202) 395-6974. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at *www.regulations.gov.* The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Payday, Vehicle Title, and Certain High-Cost Installment Loans.

OMB Control Number: 3170-XXXX.

Type of Review: New collection (Request for a new OMB control number).

Affected Public: Private Sector.

Estimated Number of Respondents: 10,442.

Estimated Total Annual Burden Hours: 6,629,201.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the notice of final rule will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule. If the OMB control number has not been assigned prior to publication of the final rule in the **Federal Register**, the Bureau will publish a separate notice in the **Federal Register** prior to the effective date of the final rule.

List of Subjects in 12 Part 1041

Banks, banking, Consumer protection, Credit, Credit unions, National banks, Registration, Reporting and recordkeeping requirements, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to add part 1041 to Chapter X in Title 12 of the Code of Federal Regulations, as set forth below:

PART 1041—PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH-COST INSTALLMENT LOANS

Subpart A—General

Sec.
1041.1 Authority and purpose.
1041.2 Definitions.
1041.3 Scope of coverage; exclusions.

Subpart B—Short-Term Loans

1041.4 Identification of abusive and unfair practice.
1041.5 Ability-to-repay determination required.
1041.6 Additional limitations on lending—covered short-term loans.
1041.7 Conditional exemption for certain covered short-term loans.

Subpart C—Longer-Term Loans

1041.8 Identification of abusive and unfair practice.
1041.9 Ability-to-repay determination required.
1041.10 Additional limitations on lending—covered longer-term loans.
1041.11 Conditional exemption for certain covered longer-term loans up to 6 months' duration.
1041.12 Conditional exemption for certain covered longer-term loans of up to 24 months' duration.

Subpart D—Payments

1041.13 Identification of unfair and abusive practice.
1041.14 Prohibited payment transfer attempts.
1041.15 Disclosure of payment transfer attempts.

Subpart E—Information Furnishing, Recordkeeping, Anti-Evasion, and Severability

1041.16 Information furnishing requirements.
1041.17 Registered information systems.
1041.18 Compliance program and record retention.
1041.19 Prohibition against evasion.

1041.20 Severability.
Appendix A to Part 1041—MODEL FORMS
Supplement I to Part 1041—Official Interpretations.

Authority: 12 U.S.C. 5511, 5512, 5514(b), 5531(b), (c), and (d), 5532.

Subpart A—General

§ 1041.1 Authority and purpose.

(a) *Authority.* The regulation in this part is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5481, *et seq.*).

(b) *Purpose.* The purpose of this part is to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions and to set forth requirements for preventing such acts or practices. This part also prescribes requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers. This part also prescribes processes and criteria for registration of information systems.

§ 1041.2 Definitions.

(a) *Definitions.* For the purposes of this part, the following definitions apply:

(1) *Account* has the same meaning as in Regulation E, 12 CFR 1005.2(b).

(2) *Affiliate* has the same meaning as in 12 U.S.C. 5481(1).

(3) *Closed-end credit* means an extension of credit to a consumer that is not open-end credit under § 1041.2(a)(14).

(4) *Consumer* has the same meaning as in 12 U.S.C. 5481(4).

(5) *Consummation* means the time that a consumer becomes contractually obligated on a new loan or a modification that increases the amount of an existing loan.

(6) *Covered short-term loan* means a loan described in § 1041.3(b)(1).

(7) *Covered longer-term balloon-payment loan* means a loan described in § 1041.3(b)(2) that requires the consumer to repay the loan in a single payment or repay the loan through at least one payment that is more than twice as large as any other payment(s) under the loan.

(8) *Covered longer-term loan* means a loan described in § 1041.3(b)(2).

(9) *Credit* has the same meaning as in Regulation Z, 12 CFR 1026.2(a)(14).

(10) *Electronic fund transfer* has the same meaning as in Regulation E, 12 CFR 1005.3(b).

(11) *Lender* means a person who regularly extends loans to a consumer primarily for personal, family, or household purposes.

(12) *Loan sequence* or *sequence* means a series of consecutive or concurrent covered short-term loans in which each of the loans (other than the first loan) is made during the time period in which the consumer has a covered short-term loan outstanding and for 30 days thereafter. For the purpose of determining where a loan is located within a loan sequence:

(i) A covered short-term loan is the first loan in a sequence if the loan is extended to a consumer who had no covered short-term loans outstanding within the immediately preceding 30 days;

(ii) A covered short-term is the second loan in the sequence if the consumer has a currently outstanding covered short-term loan, or if the consummation date of the second loan is within 30 days following the last day on which the consumer's first loan in the sequence was outstanding;

(iii) A covered short-term is the third loan in the sequence if the consumer has a currently outstanding covered short-term loan that is the second loan in the sequence, or if the consummation date of the third loan is within 30 days following the last day on which the consumer's second loan in the sequence was outstanding; and

(iv) A covered short-term is the fourth loan in the sequence if the consumer has a currently outstanding covered short-term loan that is the third loan in the sequence, or if the consummation date of the fourth loan would be within 30 days following the last day on which the consumer's third loan in the sequence was outstanding.

(13) *Non-covered bridge loan* means a non-recourse pawn loan described in § 1041.3(e)(5) that is made within 30 days of the consumer having an outstanding covered short-term loan or outstanding covered longer-term balloon-payment loan made by the same lender or its affiliate, provided that the consumer is required to repay substantially the entire amount due under the non-recourse pawn loan within 90 days of its consummation.

(14) *Open-end credit* means an extension of credit to a consumer that is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as defined in 12 CFR 1026.2(a)(11).

(15) *Outstanding loan* means a loan that the consumer is legally obligated to repay, regardless of whether the loan is delinquent or is subject to a repayment plan or other workout arrangement, except that a loan ceases to be an outstanding loan if the consumer has not made at least one payment on the loan within the previous 180 days.

(16) *Prepayment penalty* means any charge imposed for paying all or part of the loan before the date on which the loan is due in full.

(17) *Service provider* has the same meaning as in the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5481(26).

(18) *Total cost of credit* means the total amount of charges associated with a loan expressed as a per annum rate and is determined as follows:

(i) *Charges included in the total cost of credit.* The total cost of credit includes the following charges to the extent they are imposed in connection with the loan:

(A) Any charge that the consumer incurs in connection with credit insurance before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, including any charges for application, sign-up, or participation in a credit insurance plan, and any charge for a debt cancellation or debt suspension agreement;

(B) Any charge for a credit-related ancillary product, service, or membership sold before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan and in connection with the credit transaction for closed-end credit or an account for open-end credit;

(C) Finance charges associated with the credit as set forth by Regulation Z, 12 CFR 1026.4, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as that term is defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11);

(D) Any application fee charged to a consumer who applies for a covered loan; and

(E) Any fee imposed for participation in any plan or arrangement for a covered loan.

(ii) *Certain exclusions of Regulation Z inapplicable.* A charge described in paragraphs (18)(i)(A) through (E) of this section must be included in the calculation of the total cost of credit even if that charge would be excluded from the finance charge under Regulation Z, 12 CFR 1026.4(c) through (e).

(iii) *Calculation of the total cost of credit*—(A) *Closed-end credit.* For closed-end credit, the total cost of credit must be calculated according to the requirements of Regulation Z, 12 CFR 1026.22, except that the calculation must include the charges set forth in paragraphs (18)(i)(A) through (E) of this section.

(B) *Open-end credit.* For open-end credit, the total cost of credit must be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Regulation Z, 12 CFR 1026.14(c) and (d) (as if a lender must comply with that section) and must include the charges set forth in paragraphs (18)(i)(A) through (E) of this section, including the amount of charges related to opening, renewing, or continuing an account, to the extent those charges are set forth in paragraphs (18)(i)(A) through (E) of this section.

(b) [Reserved].

§ 1041.3 Scope of coverage; exclusions.

(a) *General.* This part applies to a lender that makes covered loans.

(b) *Covered loan.* Covered loan means closed-end or open-end credit that is extended to a consumer primarily for personal, family, or household purposes that is not excluded under paragraph (e) of this section; and:

(1) For closed-end credit that does not provide for multiple advances to consumers, the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation, or for all other loans, the consumer is required to repay substantially the entire amount of the advance within 45 days of the advance under the loan; or

(2) For closed-end credit that does not provide for multiple advances to consumers, the consumer is not required to repay substantially the entire amount of the loan within 45 days of consummation, or for all other loans, the consumer is not required to repay substantially the entire amount of the loan within 45 days of an advance under the loan, and the following conditions are satisfied:

(i) The total cost of credit for the loan exceeds a rate of 36 percent per annum, as measured at the time of consummation or at the time of each subsequent ability-to-repay determination required to be made pursuant to § 1041.5(b); and

(ii) The lender or service provider obtains either a leveraged payment mechanism as defined in paragraph (c) of this section or vehicle security as defined in paragraph (d) of this section before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan.

(c) *Leveraged payment mechanism.* For purposes of paragraph (b) of this section, a lender or service provider obtains a leveraged payment mechanism if it:

(1) Has the right to initiate a transfer of money, through any means, from a consumer's account to satisfy an obligation on a loan, except that the lender or service provider does not obtain a leveraged payment mechanism by initiating a one-time electronic fund transfer immediately after the consumer authorizes the transfer;

(2) Has the contractual right to obtain payment directly from the consumer's employer or other source of income; or

(3) Requires the consumer to repay the loan through a payroll deduction or deduction from another source of income.

(d) *Vehicle security.* For purposes of paragraph (b) of this section, a lender or service provider obtains vehicle security if it obtains an interest in a consumer's motor vehicle (as that term is defined in section 1029(f)(1) of the Dodd-Frank Act) as a condition of the credit, regardless of how the transaction is characterized by State law, including:

(1) Any security interest in the motor vehicle, motor vehicle title, or motor vehicle registration whether or not the security interest is perfected or recorded; or

(2) A pawn transaction in which the consumer's motor vehicle is the pledged good and the consumer retains use of the motor vehicle during the period of the pawn agreement.

(e) *Exclusions.* This part does not apply to the following types of credit:

(1) *Certain purchase money security interest loans.* Credit extended for the sole and express purpose of financing a consumer's initial purchase of a good when the credit is secured by the property being purchased, whether or not the security interest is perfected or recorded.

(2) *Real estate secured credit.* Credit that is secured by any real property, or by personal property used or expected to be used as a dwelling, and the lender records or otherwise perfects the security interest within the term of the loan.

(3) *Credit cards.* Any credit card account under an open-end (not home-secured) consumer credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(15)(ii).

(4) *Student loans.* Credit made, insured, or guaranteed pursuant to a program authorized by subchapter IV of the Higher Education Act of 1965, 20 U.S.C. 1070 through 1099d, or a private education loan as defined in Regulation Z, 12 CFR 1026.46(b)(5).

(5) *Non-recourse pawn loans.* Credit in which the lender has sole physical possession and use of the property securing the credit for the entire term of the loan and for which the lender's sole recourse if the consumer does not elect to redeem the pawned item and repay the loan is the retention of the property securing the credit.

(6) *Overdraft services and lines of credit.* Overdraft services as defined in 12 CFR 1005.17(a), and overdraft lines of credit otherwise excluded from the definition of overdraft services under 12 CFR 1005.17(a)(1).

Subpart B—Short-Term Loans

§ 1041.4 Identification of abusive and unfair practice.

It is an abusive and unfair practice for a lender to make a covered short-term loan without reasonably determining that the consumer will have the ability to repay the loan.

§ 1041.5 Ability-to-repay determination required.

(a) *Definitions.* For purposes of this section and § 1041.6:

(1) *Basic living expenses* means expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer.

(2) *Major financial obligations* means a consumer's housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations.

(3) *National consumer report* means a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d) obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(4) *Net income* means the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions (but before deductions of any amounts for payments under a prospective covered loan or for any major financial obligation);

(5) *Payment under the covered short-term loan:*

(i) Means the combined dollar amount payable by the consumer at a particular time following consummation in connection with the covered short-term loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the loan;

(ii) Includes all principal, interest, charges, and fees; and

(iii) For a line of credit is calculated assuming that:

(A) The consumer will utilize the full amount of credit under the covered short-term loan as soon as the credit is available to the consumer; and

(B) The consumer will make only minimum required payments under the covered short-term loan.

(6) *Residual income* means the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts are determined in accordance with paragraph (c).

(b) *Reasonable determination required.* (1)(i) Except as provided in § 1041.7, a lender must not make a covered short-term loan or increase the credit available under a covered short-term loan, unless the lender first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.

(ii) For a covered short-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a required determination under this paragraph (b), unless the lender first makes a new determination that the consumer will have the ability to repay the covered short-term loan according to its terms.

(2) A lender's determination of a consumer's ability to repay a covered short-term loan is reasonable only if, based on projections in accordance with paragraph (c) of this section, the lender reasonably concludes that:

(i) The consumer's residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the shorter of the term of the loan or the period ending 45 days after consummation of the loan;

(ii) The consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days after having made the highest payment under the loan on its due date; and

(iii) For a loan for which a presumption of unaffordability applies under § 1041.6, the applicable requirements of § 1041.6 are satisfied.

(c) *Projecting consumer net income and payments for major financial obligations*—(1) *General.* To make a reasonable determination required under paragraph (b) of this section, a lender must obtain the consumer's written statement in accordance with paragraph (c)(3)(i), obtain verification evidence as required by paragraph (c)(3)(ii), and make a reasonable projection of the amount and timing of a consumer's net income and payments for major financial obligations. To be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on a consumer's written statement of amounts and timing under paragraph (c)(3)(i) of this section only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with paragraph (c)(3)(ii) of this section. In determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer.

(2) *Changes not supported by verification evidence.* A lender may project a net income amount that is higher than an amount that would otherwise be supported under paragraph (c)(1) of this section or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under paragraph (c)(1) of this section only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer's major financial obligation of the amount and timing of the new or changed net income or payment.

(3) *Evidence of net income and payments for major financial obligations*—(i) *Consumer statements.* A lender must obtain a consumer's written statement of:

(A) The amount and timing of the consumer's net income receipts; and

(B) The amount and timing of payments required for categories of the consumer's major financial obligations.

(ii) *Verification evidence.* A lender must obtain verification evidence for the amounts and timing of the consumer's net income and payments for major financial obligations, as follows:

(A) For the consumer's net income, a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender's projection under paragraph (c)(1);

(B) For the consumer's required payments under debt obligations, a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available;

(C) For a consumer's required payments under court- or government agency-ordered child support obligations, a national consumer report;

(D) For a consumer's housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained pursuant to paragraph (c)(3)(ii)(B) of this section):

(*1*) A reliable transaction record (or records) of recent housing expense payments or a lease; or

(*2*) An amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer.

§ 1041.6 Additional limitations on lending—covered short-term loans.

(a) *Additional limitations on making a covered short-term loan under § 1041.5*—(1) *General.* When a consumer is presumed under paragraphs (b), (c), and (d) of this section not to have the ability to repay a covered short-term loan, a lender's determination that the consumer will have the ability to repay the loan is not reasonable unless the requirements set forth in paragraph (e) of this section are satisfied. A lender must not make a covered short-term loan under § 1041.5 during the mandatory cooling-off periods set forth in paragraphs (f) and (g) of this section.

(2) *Borrowing history review.* Prior to making a covered short-term loan under § 1041.5, in order to determine whether any of the presumptions or prohibitions in this subsection are applicable, a lender must obtain and review information about the consumer's borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available.

(b) *Presumption of unaffordability for sequence of covered short-term loans made under § 1041.5*—(1) *Presumption.* A consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter.

(2) *Exception.* The presumption of unaffordability in paragraph (b)(1) of this section does not apply if:

(i) Either:

(A) The consumer paid in full the prior covered short-term loan (including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit), and the consumer would not owe, in connection with the new covered short-term loan, more than 50 percent of the amount that the consumer paid on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit); or

(B) The consumer is seeking to roll over the remaining balance on a covered short-term loan and would not owe more on the new covered short-term loan than the consumer paid on the prior covered short-term loan that is being rolled over (including the amount financed and charges included in the total cost of credit, but excluding any charges that are excluded from the total cost of credit); and

(ii) The new covered short-term loan would be repayable over a period that is at least as long as the period over which the consumer made payment or payments on the prior covered short-term loan.

(c) *Presumption of unaffordability for a covered short-term loan following a covered longer-term balloon-payment loan made under § 1041.9.* A consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter.

(d) *Presumption of unaffordability for a covered short-term loan during an unaffordable outstanding loan.* Except for loans subject to the presumptions or prohibitions under paragraphs (b), (c), (f), or (g) of this section, a consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 if, at the time of the lender's determination under § 1041.5, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the following conditions are present:

(1) The consumer is or has been delinquent by more than seven days within the past 30 days on a scheduled payment on the outstanding loan;

(2) The consumer expresses or has expressed within the past 30 days an inability to make one or more payments on the outstanding loan;

(3) The period of time between consummation of the new covered short-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered short-term loan and the next regularly scheduled payment on the outstanding loan; or

(4) The new covered short-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that would not substantially exceed the amount of the payment or payments that would be due on the outstanding loan within 30 days of consummation of the new covered short-term loan.

(e) *Overcoming the presumption of unaffordability.* When a presumption under paragraphs (b), (c), or (d) of this section applies to a covered short-term loan, a lender's determination under § 1041.5 that the consumer will have the ability to repay the loan is not reasonable unless the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. To assess whether there is such sufficient improvement in financial capacity, the lender must compare the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.5(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

(f) *Prohibition on loan sequences of more than three covered short-term loans made under § 1041.5.* Notwithstanding the requirements of paragraph (b) of this section, a lender must not make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter if the new covered short-term loan would be the fourth loan in a sequence of covered short-term loans made under § 1041.5.

(g) *Prohibition on making a covered short-term loan under § 1041.5 following a covered short-term loan made under § 1041.7.* A lender must not make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.7 outstanding and for 30 days thereafter.

(h) *Determining period between consecutive covered loans.* If a lender or its affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by the lender or its affiliate under § 1041.5 or § 1041.7 or a covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods specified by paragraphs (b), (c), (f), and (g) of this section.

§ 1041.7 Conditional exemption for certain covered short-term loans.

(a) *Conditional exemption for certain covered short-term loans.* Sections 1041.4, 1041.5, and 1041.6, do not apply to a covered short-term loan that satisfies the requirements set forth in paragraphs (b) through (e) of this section. Prior to making a covered short-term loan under this section, the lender must review the consumer's borrowing history in the records of the lender, the records of the lender's affiliates, and a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2). The lender must use this borrowing history information to determine a potential loan's compliance with the requirements in paragraphs (b), (c), and (d) of this section.

(b) *Loan term requirements.* A covered short-term loan that is made under this section must satisfy the following requirements:

(1) The loan satisfies the following principal amount limitations, as applicable:

(i) For the first loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than $500.

(ii) For the second loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than two-thirds of the principal amount of the first loan in the loan sequence.

(iii) For the third loan in a loan sequence of covered short-term loans made under this section, the principal amount is no greater than one-third of the principal amount of the first loan in the loan sequence.

(2) The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every scheduled repayment period for the term of the loan.

(3) The lender does not take an interest in a consumer's motor vehicle as a condition of the loan, as described in § 1041.3(d).

(4) The loan is not structured as open-end credit, as defined in § 1041.2(a)(14).

(c) *Borrowing history requirements.* Prior to making a covered short-term loan under this section, the lender must determine that the following requirements are satisfied:

(1) The consumer does not have a covered loan outstanding made under § 1041.5, § 1041.7, or § 1041.9, not including a loan made by the same lender or its affiliate under § 1041.7 that the lender is rolling over;

(2) The consumer has not had in the past 30 days an outstanding loan that was either a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9;

(3) The loan would not result in the consumer having a loan sequence of more than three covered short-term loans made by any lender under this section; and

(4) The loan would not result in the consumer having during any consecutive 12-month period:

(i) More than six covered short-term loans outstanding; or

(ii) Covered short-term loans outstanding for an aggregate period of more than 90 days.

(d) *Determining period between consecutive covered short-term loans made under the conditional exemption.* If the lender or an affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by a lender or its affiliate under this section is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods when making a subsequent loan under this section.

(e) *Disclosures.*

(1) *General form of disclosures.*

(i) *Clear and conspicuous.* Disclosures required by this paragraph (e) must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

(ii) *In writing or electronic delivery.* Disclosures required by this paragraph (e) must be provided in writing or through electronic delivery. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This provision is not satisfied by a disclosure provided orally or through a recorded message.

(iii) *Retainable.* Disclosures required by this paragraph (e) must be provided in a retainable form.

(iv) *Segregation requirements for notices.* Notices required by this paragraph (e) must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this paragraph (e) must not be displayed above, below, or around the required content.

(v) *Machine readable text in notices provided through electronic delivery.* If provided through electronic delivery, the notices required by paragraphs (e)(2)(i) and (ii) of this section must use machine readable text that is accessible via both web browsers and screen readers.

(vi) *Model Forms*—(A) *First loan notice.* The content, order, and format of the notice required by paragraph (e)(2)(i) of this section must be substantially similar to Model Form A-1 in appendix A to this part.

(B) *Third loan notice.* The content, order, and format of the notice required by paragraph (e)(2)(ii) of this section must be substantially similar to Model Form A-2 in appendix A to this part.

(vii) *Foreign language disclosures.* Disclosures required under this paragraph may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(2) *Notice requirements*—(i) *First loan notice.* A lender that makes a first loan in a sequence of loans made under this section must provide to a consumer a notice that includes, as applicable, the following information and statements, using language substantially similar to the language set forth in Model Form A-1 in appendix A to this part:

(A) *Identifying statement.* The statement "Notice of restrictions on future loans," using that phrase.

(B) *Warning for loan made under this section.*

(*1*) *Possible inability to repay.* A statement that warns the consumer not to take out the loan if the consumer is unsure of being able to repay the total amount of principal and finance charges on the loan by the contractual due date.

(*2*) *Contractual due date.* Contractual due date of the loan made under this section.

(*3*) *Total amount due.* Total amount due on the contractual due date.

(C) *Restriction on a subsequent loan required by Federal law.* A statement that informs a consumer that Federal law requires a similar loan taken out within the next 30 days to be smaller.

(D) *Borrowing limits.* In a tabular form:

(*1*) Maximum principal amount on loan 1 in a sequence of loans made under this section.

(*2*) Maximum principal amount on loan 2 in a sequence of loans made under this section.

(*3*) Maximum principal amount on loan 3 in a sequence of loans made under this section.

(*4*) Loan 4 in a sequence of loans made under this section is not allowed.

(E) *Lender name and contact information.* Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(ii) *Third loan notice.* A lender that makes a third loan in a sequence of loans made under this section must provide to a consumer a notice that includes the following information and statements, using language substantially similar to the language set forth in Model Form A-2 in appendix A to this part:

(A) *Identifying statement.* The statement "Notice of borrowing limits on this loan and future loans," using that phrase.

(B) *Two similar loans without 30-day break.* A statement that informs a consumer that the lender's records show that the consumer has had two similar loans without taking at least a 30-day break between them.

(C) *Restriction on loan amount required by Federal law.* A statement that informs a consumer that Federal law requires the loan to be smaller than previous loans in the loan sequence.

(D) *Prohibition on subsequent loan.* A statement that informs a consumer that the consumer cannot take out a similar loan for at least 30 days after repaying the loan.

(E) *Lender name and contact information.* Name of the lender and a telephone number for the lender and, if applicable, a URL of the Web site for the lender.

(3) *Timing.* A lender must provide the notices required in paragraphs (e)(2)(i) and (e)(2)(ii) of this section to the consumer before a loan under § 1041.7 is consummated.

Subpart C—Longer-Term Loans

§ 1041.8 Identification of abusive and unfair practice.

It is an abusive and unfair practice for a lender to make a covered longer-term loan without reasonably determining that the consumer will have the ability to repay the loan.

§ 1041.9 Ability-to-repay determination required.

(a) *Definitions.* For purposes of this section and § 1041.10:

(1) *Basic living expenses* means expenditures, other than payments for major financial obligations, that a consumer makes for goods and services necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer.

(2) *Major financial obligations* means a consumer's housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations.

(3) *National consumer report* means a consumer report, as defined in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d) obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(4) *Net income* means the total amount that a consumer receives after the payer deducts amounts for taxes, other obligations, and voluntary contributions (but before deductions of any amounts for payments under a prospective covered loan or for any major financial obligation);

(5) *Payment under the covered longer-term loan:*

(i) Means the combined dollar amount payable by the consumer at a particular time following consummation in connection with the covered longer-term loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the loan;

(ii) Includes all principal, interest, charges, and fees; and

(iii) For a line of credit is calculated assuming that:

(A) The consumer will utilize the full amount of credit under the covered loan as soon as the credit is available to the consumer;

(B) The consumer will make only minimum required payments under the covered loan; and

(C) If the terms of the covered longer-term loan would not provide for termination of access to the line of credit by a date certain and for full repayment of all amounts due by a subsequent date certain, that the consumer must repay any remaining balance in one payment on the date that is 180 days following the consummation date.

(6) *Residual income* means the sum of net income that the lender projects the consumer obligated under the loan will receive during a period, minus the sum of amounts that the lender projects will be payable by the consumer for major financial obligations during the period, all of which projected amounts are determined in accordance with paragraph (c).

(b) *Reasonable determination required.* (1)(i) Except as provided in § 1041.11 or § 1041.12, a lender must not make a covered longer-term loan or increase the credit available under a covered longer-term loan, unless the lender first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms.

(ii) For a covered longer-term loan that is a line of credit, a lender must not permit a consumer to obtain an advance under the line of credit more than 180 days after the date of a required determination under this paragraph (b), unless the lender first makes a new determination that the consumer will have the ability to repay the covered loan according to its terms.

(2) A lender's determination of a consumer's ability to repay a covered longer-term loan is reasonable only if, based on projections in accordance with paragraph (c) of this section, the lender reasonably concludes that:

(i) The consumer's residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan;

(ii) For a covered longer-term balloon-payment loan, the consumer will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days after having made the highest payment under the loan on its due date; and

(iii) For a loan for which a presumption of unaffordability applies under § 1041.10, the applicable requirements of § 1041.10 are satisfied.

(c) *Projecting consumer net income and payments for major financial obligations*—(1) *General.* To make a reasonable determination required under paragraph (b) of this section, a lender must obtain the consumer's written statement in accordance with paragraph (c)(3)(i) of this section, obtain verification evidence as required by paragraph (c)(3)(ii) of this section, and make a reasonable projection of the amount and timing of a consumer's net income and payments for major financial obligations. To be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on a consumer's written statement of amounts and timing under paragraph (c)(3)(i) of this section only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with paragraph (c)(3)(ii) of this section. In determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer.

(2) *Changes not supported by verification evidence.* A lender may project a net income amount that is higher than an amount that would otherwise be supported under paragraph (c)(1) of this section or a payment amount under a major financial obligation that is lower than an amount that would otherwise be supported under paragraph (c)(1) of this section only to the extent and for such portion of the term of the loan that the lender obtains a written statement from the payer of the income or the payee of the consumer's major financial obligation of the amount and timing of the new or changed net income or payment.

(3) *Evidence of net income and payments for major financial obligations*—(i) *Consumer statements.* A lender must obtain a consumer's written statement of:

(A) The amount and timing of the consumer's net income receipts; and

(B) The amount and timing of payments required for categories of the consumer's major financial obligations.

(ii) *Verification evidence.* A lender must obtain verification evidence for the amounts and timing of the consumer's net income and payments for major financial obligations, as follows:

(A) For the consumer's net income, a reliable record (or records) of an income payment (or payments) covering sufficient history to support the lender's projection under paragraph (c)(1) of this section;

(B) For the consumer's required payments under debt obligations, a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available;

(C) For a consumer's required payments under court- or government agency-ordered child support obligations, a national consumer report;

(D) For a consumer's housing expense (other than a payment for a debt obligation that appears on a national consumer report obtained pursuant to paragraph (c)(3)(ii)(B) of this section):

(*1*) A reliable transaction record (or records) of recent housing expense payments or a lease; or

(*2*) An amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer.

§ 1041.10 Additional limitations on lending—covered longer-term loans.

(a) *Additional limitations on making a covered longer-term loan under § 1041.9.*—(1) *General.* When a consumer is presumed under paragraphs (b) or (c) of this section not to have the ability to repay a covered longer-term loan, a lender's determination that the consumer will have the ability to repay the loan is not reasonable unless the requirements set forth in paragraph (d) of this section are satisfied. A lender must not make a covered longer-term loan under § 1041.9 during the period set forth in paragraph (e) of this section.

(2) *Borrowing history review.* Prior to making a covered longer-term loan under § 1041.9, in order to determine whether either of the presumptions or the prohibition in this section is applicable, a lender must obtain and review information about the consumer's borrowing history from the records of the lender and its affiliates, and from a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available.

(b) *Presumption of unaffordability for certain covered longer-term loans following a covered short-term loan or covered longer-term balloon-payment loan*—(1) *Presumption.* A consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter.

(2) *Exception.* The presumption of unaffordability in paragraph (b)(1) of this section does not apply if every payment on the new covered longer-term loan would be substantially smaller than the largest required payment on the prior covered short-term loan or covered longer-term balloon-payment loan.

(c) *Presumption of unaffordability for a covered longer-term loan during an unaffordable outstanding loan*—(1) *Presumption.* Except for loans subject to the presumption under paragraph (b) or the prohibition under paragraph (e) of this section, a consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 if, at the time of the lender's determination under § 1041.9, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the following conditions are present:

(i) The consumer is or has been delinquent by more than seven days within the past 30 days on a scheduled payment on the outstanding loan;

(ii) The consumer expresses or has expressed within the past 30 days an inability to make one or more payments on the outstanding loan;

(iii) The period of time between consummation of the new covered longer-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered longer-term loan and the next regularly scheduled payment on the outstanding loan; or

(iv) The new covered longer-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that would not substantially exceed the amount of payment or payments that would be due on the outstanding loan within 30 days of consummation of the new covered longer-term loan.

(2) *Exception.* The presumption of unaffordability in paragraph (c)(1) of this section does not apply if either:

(i) The size of every payment on the new covered longer-term loan would be substantially smaller than the size of every payment on the outstanding loan; or

(ii) The new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan.

(d) *Overcoming the presumption of unaffordability.* When a presumption under paragraphs (b) or (c) of this section applies to a covered longer-term loan, a lender's determination under § 1041.9 that the consumer will have the ability to repay the loan is not reasonable unless the lender reasonably determines, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. To assess whether there is such sufficient improvement in financial capacity, the lender must compare the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.9(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

(e) *Prohibition on making a covered longer-term loan under § 1041.9 following a covered short-term loan made under § 1041.7.* Notwithstanding the requirements of paragraph (b) of this section, a lender must not make a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made by the lender or its affiliate under § 1041.7 outstanding and for 30 days thereafter.

(f) *Determining period between consecutive covered loans.* If the lender or its affiliate makes a non-covered bridge loan during the time period in which a covered short-term loan made by the lender or its affiliate under § 1041.5 or § 1041.7 or a covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding do not count toward the determination of time periods specified by paragraphs (b) and (e) of this section.

§ 1041.11 Conditional exemption for certain covered longer-term loans of up to six months' duration.

(a) *Conditional exemption for certain covered longer-term loans.* Sections 1041.8, 1041.9, 1041.10, and 1041.15(b) do not apply to a covered longer-term loan that satisfies the conditions and requirements set forth in paragraphs (b) through (e) of this section.

(b) *Loan term conditions.* A covered longer-term loan that is made under this section must satisfy the following conditions:

(1) The loan is not structured as open-end credit, as defined in § 1041.2(a)(14);

(2) The loan has a term of not more than six months;

(3) The principal of the loan is not less than $200 and not more than $1,000;

(4) The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;

(5) The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan; and

(6) The loan carries a total cost of credit of not more than the cost permissible for Federal credit unions to charge under regulations issued by the National Credit Union Administration at 12 CFR 701.21(c)(7)(iii).

(c) *Borrowing history condition.* Prior to making a covered longer-term loan under this section, the lender must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than three outstanding loans made under this section from the lender or its affiliates within a period of 180 days.

(d) *Income documentation condition.* The lender must maintain and comply with policies and procedures for documenting proof of recurring income.

(e) *Additional requirements.* The lender must comply with the following requirements in connection with a covered longer-term loan made under this section:

(1) In connection with a covered longer-term loan made under this section, the lender must not:

(i) Impose a prepayment penalty; or

(ii) If the lender holds funds on deposit in the consumer's name, in response to an actual or expected delinquency or default on the loan: Sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer's account, or close the account.

(2) For each covered longer-term loan made under this section, the lender must either:

(i) Furnish the information concerning the loan as described in § 1041.16(c) to each information system described in § 1041.16(b); or

(ii) Furnish information concerning the loan at the time of the lender's next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation of the loan, whichever is earlier. For the purposes of this paragraph (e)(2)(ii), "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

§ 1041.12 Conditional exemption for certain covered longer-term loans of up to 24 months' duration.

(a) *Conditional exemption for certain covered longer-term loans.* Sections 1041.8, 1041.9, 1041.10, and 1041.15(b) do not apply to a covered longer-term loan that satisfies the conditions and requirements set forth in paragraphs (b) through (f) of this section.

(b) *Loan term conditions.* A covered longer-term loan that is made under this section must satisfy the following conditions:

(1) The loan is not structured as open-end credit, as defined in § 1041.2(a)(14);

(2) The loan has a term of not more than 24 months;

(3) The loan is repayable in two or more payments due no less frequently than monthly, all of which payments are substantially equal in amount and fall due in substantially equal intervals;

(4) The loan amortizes completely during the term of the loan and the payment schedule provides for the lender allocating a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal every repayment period for the term of the loan; and

(5) The loan carries a modified total cost of credit of less than or equal to an annual rate of 36 percent. Modified total cost of credit is calculated in the manner set forth in § 1041.2(a)(18)(iii)(A) for calculating total cost of credit for closed-end loans, except that for purposes of this paragraph (b)(5) only, the lender may exclude from the calculation a single origination fee meeting the criteria in paragraph (b)(5)(i) or (ii) of this section.

(i) *Fee based on costs.* A lender may exclude from the calculation of modified total cost of credit a single origination fee that represents a reasonable proportion of the lender's cost of underwriting loans made pursuant to this section.

(ii) *Safe harbor.* A lender may exclude from the calculation of modified total cost of credit a single origination fee if the dollar amount of the fee does not exceed $50.

(c) *Borrowing history condition.* Prior to making a covered longer-term loan under this section, the lender must determine from its records and the records of its affiliates that the loan would not result in the consumer being indebted on more than two outstanding loans made under this section from the lender or its affiliates within a period of 180 days.

(d) *Underwriting method.* The lender must maintain and comply with policies and procedures for effectuating an underwriting method designed to result in a portfolio default rate that will be less than or equal to 5 percent per year. Such policies and procedures must include the following:

(1) At least once every 12 months, the lender must calculate the portfolio default rate for covered longer-term loans made under this section that were outstanding at any time during the preceding year; and

(2) If the lender's portfolio default rate for covered longer-term loans made under this section exceeds 5 percent per year, the lender must, within 30 calendar days of identifying the excessive portfolio default rate, refund to each consumer that received a loan included in the calculation of the portfolio default rate any origination fee imposed in connection with the covered longer-term loan and excluded from the modified total cost of credit pursuant to paragraph (b)(5) of this section. A lender will be deemed to have timely refunded a consumer if the lender delivers payment to the consumer or places the payment in the mail to the consumer within 30 calendar days after identifying the excessive portfolio default rate.

(e) *Calculation of portfolio default rate.* For the purposes of this section, a lender's portfolio default rate calculation must comply with the following conditions:

(1) Portfolio default rate means:

(i) The sum of the dollar amounts owed on any covered longer-term loans made under this section that were either:

(A) Delinquent for a period of 120 consecutive days or more during the 12-month period for which the portfolio default rate is being calculated; or

(B) Charged off during the 12-month period for which the portfolio default rate is being calculated before becoming 120 days delinquent;

(ii) Divided by the average of month-end outstanding balances owed on all covered longer-term loans made under this section for each month of the 12-month period;

(2) The portfolio default rate must be calculated as a gross sum using all covered longer-term loans made under this section that were outstanding at any point during the 12-month period for which the portfolio default rate is calculated;

(3) For purposes of this paragraph, a loan is considered 120 days delinquent even if it is re-aged by the lender prior to the 120th day, unless the consumer has made at least one full payment and the re-aging is for a period equivalent to the period for which the consumer has made a payment; and

(4) A lender must calculate the portfolio default rate within 90 days following the last day of the applicable 12-month period.

(f) *Additional requirements.* The lender must comply with the following requirements in connection with a covered longer-term loan made under this section:

(1) In connection with a covered longer-term loan made under this section, the lender must not:

(i) Impose a prepayment penalty; or

(ii) If the lender holds funds on deposit in the consumer's name, in response to an actual or expected delinquency or default on the loan: sweep the account to a negative balance, exercise a right of set-off to collect on the loan, including placing a hold on funds in the consumer's account, or close the account.

(2) For each covered longer-term loan made under this section, the lender must either:

(i) Furnish the information concerning the loan as described in § 1041.16(c) to each information system described in § 1041.16(b); or

(ii) Furnish information concerning the loan at the time of the lender's next regularly-scheduled furnishing of information to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or within 30 days of consummation of the loan, whichever is earlier. For the purposes of this paragraph (f)(2)(ii), "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" has the same meaning as in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

Subpart D—Payments

§ 1041.13 Identification of unfair and abusive practice.

It is an unfair and abusive act or practice for a lender to attempt to withdraw payment from a consumer's account in connection with a covered loan after the lender's second consecutive attempt to withdraw payment from the account has failed due to a lack of sufficient funds, unless the lender obtains the consumer's new and specific authorization to make further withdrawals from the account.

§ 1041.14 Prohibited payment transfer attempts.

(a) *Definitions.* For purposes of this section and § 1041.15:

(1) *Payment transfer* means any lender-initiated debit or withdrawal of funds from a consumer's account for the purpose of collecting any amount due or purported to be due in connection with a covered loan. The term includes, but is not limited to, a debit or withdrawal of funds initiated by the lender from a consumer's account for such purpose through any of the following means:

(i) Electronic fund transfer, including a preauthorized electronic fund transfer as defined in Regulation E, 12 CFR 1005.2(k).

(ii) Signature check, regardless of whether the transaction is processed through the check network or another network, such as the automated clearing house (ACH) network.

(iii) Remotely created check as defined in Regulation CC, 12 CFR 229.2(fff).

(iv) Remotely created payment order as defined in 16 CFR 310.2(cc).

(v) An account-holding institution's transfer of funds from a consumer's account that is held at the same institution.

(2) *Single immediate payment transfer at the consumer's request* means:

(i) A payment transfer initiated by a one-time electronic fund transfer within one business day after the lender obtains the consumer's authorization for the one-time electronic fund transfer.

(ii) A payment transfer initiated by means of processing the consumer's signature check through the check system or through the ACH system within one business day after the consumer provides the check to the lender.

(b) *Prohibition on initiating payment transfers from a consumer's account after two consecutive failed payment transfers*—(1) *General.* A lender must not initiate a payment transfer from a consumer's account in connection with a covered loan after the lender has attempted to initiate two consecutive failed payment transfers from the consumer's account in connection with that covered loan. For purposes of this paragraph (b), a payment transfer is deemed to have failed when it results in a return indicating that the consumer's account lacks sufficient funds or, for a lender that is the consumer's account-holding institution, it results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds.

(2) *Consecutive failed payment transfers.* For purposes of the prohibition in this paragraph (b):

(i) *First failed payment transfer.* A failed payment transfer is the first failed payment transfer if it meets any of the following conditions:

(A) The lender has initiated no other payment transfer from the consumer's account in connection with the covered loan.

(B) The immediately preceding payment transfer was successful, regardless of whether the lender has previously initiated a first failed payment transfer.

(C) The payment transfer is the first payment transfer to fail after the lender obtains the consumer's authorization for additional payment transfers pursuant to paragraph (c) of this section.

(ii) *Second consecutive failed payment transfer.* A failed payment transfer is the second consecutive failed payment transfer if the previous payment transfer was a first failed payment transfer. For purposes of this paragraph (b)(2)(ii), a previous payment transfer includes a payment transfer initiated at the same time or on the same day as the failed payment transfer.

(iii) *Different payment channel.* A failed payment transfer meeting the conditions in paragraph (b)(2)(ii) of this section is the second consecutive failed payment transfer regardless of whether the first failed payment transfer was initiated through a different payment channel.

(c) *Exception for additional payment transfers authorized by the consumer*—(1) *General.* Notwithstanding the prohibition in paragraph (b) of this section, a lender may initiate additional payment transfers from a consumer's account after two consecutive failed payment transfers if the additional payment transfers are authorized by the consumer in accordance with the requirements and conditions in this paragraph (c) or if the lender executes a single immediate payment transfer at the consumer's request in accordance with paragraph (d) of this section.

(2) *General authorization requirements and conditions*—(i) *Required payment transfer terms.* For purposes of this paragraph (c), the specific date, amount, and payment channel of each additional payment transfer must be authorized by the consumer, except as provided in paragraph (c)(2)(ii) or (iii) of this section.

(ii) *Application of specific date requirement to re-initiating a returned payment transfer.* If a payment transfer authorized by the consumer pursuant to this paragraph (c) is returned for nonsufficient funds, the lender may re-initiate the payment transfer, such as by re-presenting it once through the ACH system, on or after the date authorized by the consumer, provided that the returned payment transfer has not triggered the prohibition in paragraph (b) of this section.

(iii) *Special authorization requirements and conditions for payment transfers to collect a late fee or returned item fee.* (A) A lender may initiate a payment transfer pursuant to this paragraph (c) solely to collect a late fee or returned item fee without obtaining the consumer's authorization for the specific date and amount of the payment transfer only if the consumer authorizes the lender to initiate such payment transfers. For purposes of this paragraph (c)(2)(iii)(A), the consumer authorizes such payment transfers only if the consumer's authorization obtained under paragraph (c)(3)(iii) of this section includes a statement, in terms that are clear and readily understandable to the consumer, that payment transfers may be initiated solely to collect a late fee or returned item fee and specifies the highest amount for such fees that may be charged, and the payment channel to be used.

(B) A lender may add the amount of one late fee or one returned item fee to the original amount of a payment transfer authorized by the consumer pursuant to this paragraph (c) only if the consumer authorizes the lender to initiate transfers that include such an additional amount. For purposes of this paragraph (c)(2)(iii)(B), the consumer authorizes the lender to initiate payment transfers that include such an amount if the consumer's authorization obtained under paragraph (c)(3)(iii) of this section includes a statement, in terms that are clear and readily understandable to the consumer, that the amount of one late fee or one returned item fee may be added to any payment transfer and specifies the highest amount for such fees that may be charged, and the payment channel to be used.

(3) *Requirements and conditions for obtaining the consumer's authorization*—(i) *General.* For purposes of this paragraph (c), the lender must request and obtain the consumer's authorization for additional payment transfers in accordance with the requirements and conditions in this paragraph (c)(3).

(ii) *Provision of payment transfer terms to the consumer.* The lender may request the consumer's authorization for additional payment transfers no earlier than the date on which the lender provides to the consumer the consumer rights notice required by § 1041.15(d). The request must include the payment transfer terms required under paragraph (c)(2)(i) of this section and, if applicable, the statements required by paragraph (c)(2)(iii)(A) or (B) of this section. The lender may provide the terms and statements to the consumer by any one of the following means:

(A) In writing, by mail or in person, or in a retainable form by email if the consumer has consented to receive electronic disclosures in this manner under § 1041.15(a)(4) or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d).

(B) By oral telephone communication, if the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice required by § 1041.15(d) and agrees to receive the terms and statements in that manner in the course of, and as part of, the same communication.

(iii) *Signed authorization required*—(A) *General.* For an authorization to be valid under this paragraph (c), it must be signed or otherwise agreed to by the consumer in writing or electronically and in a retainable format that memorializes the payment transfer terms required under paragraph (c)(2)(i) of this section and, if applicable, the statements required by paragraph (c)(2)(iii)(A) or (B) of this section to which the consumer has agreed. The signed authorization must be obtained from the consumer no earlier than when the consumer receives the consumer rights notice required by § 1041.15(d) in person or electronically, or the date on which the consumer receives the notice by mail. For purposes of this paragraph (c)(3)(iii)(A), the consumer is considered to have received the notice at the time it is provided to the consumer in person or electronically, or, if the notice is provided by mail, the earlier of the third business day after mailing or the date on which the consumer affirmatively responds to the mailed notice.

(B) *Special requirements for authorization obtained by oral telephone communication.* If the authorization is granted in the course of an oral telephone communication, the lender must record the call and retain the recording.

(C) *Memorialization required.* If the authorization is granted in the course of a recorded telephonic conversation or is otherwise not immediately retainable by the consumer at the time of signature, the lender must provide a memorialization in a retainable form to the consumer by no later than the date on which the first payment transfer authorized by the consumer is initiated. A memorialization may be provided to the consumer by email in accordance with the requirements and conditions in paragraph (c)(3)(ii)(A) of this section.

(4) *Expiration of authorization.* An authorization obtained from a consumer pursuant to this paragraph (c) becomes null and void for purposes of the exception in this paragraph (c) if:

(i) The lender subsequently obtains a new authorization from the consumer pursuant to this paragraph (c).

(ii) Two consecutive payment transfers initiated pursuant to the consumer's authorization fail, as specified in paragraph (b) of this section.

(d) *Exception for initiating a single immediate payment transfer at the consumer's request.* After a lender's second consecutive payment transfer has failed as specified in paragraph (b) of this section, the lender may initiate a payment transfer from the consumer's account without obtaining the consumer's authorization for additional payment transfers pursuant to paragraph (c) of this section if:

(1) The payment transfer is a single immediate payment transfer at the consumer's request as defined in paragraph (a)(2) of this section; and

(2) The consumer authorizes the underlying one-time electronic fund transfer or provides the underlying signature check to the lender, as applicable, no earlier than the date on which the lender provides to the consumer the consumer rights notice required by § 1041.15(d) or on the date that the consumer affirmatively contacts the lender to discuss repayment options, whichever date is earlier.

§ 1041.15 Disclosure of payment transfer attempts.

(a) *General form of disclosures*—(1) *Clear and conspicuous.* Disclosures required by this section must be clear and conspicuous. Disclosures required by this section may contain commonly accepted or readily understandable abbreviations.

(2) *In writing or electronic delivery.* Disclosures required by this section must be provided in writing or through electronic delivery. The disclosures may be provided electronically as long as the requirements of paragraph (a)(4) of this section are satisfied. The disclosures must be provided in a form that can be viewed on paper or a screen, as applicable. This provision is not satisfied by a disclosure provided orally or through a recorded message.

(3) *Retainable.* Disclosures required by this section must be provided in a retainable form, except for electronic short notices delivered by mobile application or text message under paragraph (c) or (e) of this section.

(4) *Electronic delivery.* Disclosures required by this section may be provided through electronic delivery if the following consent requirements are satisfied:

(i) *Consumer consent*—(A) *General.* Disclosures required by this section may be provided through electronic delivery if the consumer affirmatively consents in writing or electronically to the particular electronic delivery method.

(B) *Email option required.* To obtain valid consumer consent to electronic delivery under this paragraph, a lender must provide the consumer with the option to select email as the method of electronic delivery, separate and apart from any other electronic delivery methods such as mobile application or text message.

(ii) *Subsequent loss of consent.* Notwithstanding paragraph (a)(3)(i) of this section, a lender must not provide disclosures required by this section through a method of electronic delivery if:

(A) The consumer revokes consent to receive disclosures through that delivery method; or

(B) The lender receives notification that the consumer is unable to receive disclosures through that delivery method at the address or number used.

(5) *Segregation requirements for notices.* All notices required by this section must be segregated from all other written or provided materials and contain only the information required by this section, other than information necessary for product identification, branding, and navigation. Segregated additional content that is not required by this section must not be displayed above, below, or around the required content.

(6) *Machine readable text in notices provided through electronic delivery.* If provided through electronic delivery, the payment notice required by paragraph (b) and the consumer rights notice required by paragraph (d) of this section must use machine readable text that is accessible via both web browsers and screen readers.

(7) *Model Forms*—(i) *Payment notice.* The content, order, and format of the payment notice required by paragraph (b) of this section must be substantially similar to Model Forms A-3 through A-4 in appendix A to this part.

(ii) *Consumer rights notice.* The content, order, and format of the consumer rights notice required by paragraph (d) of this section must be substantially similar to Model Form A-5 in appendix A to this part.

(iii) *Electronic short notice.* The content, order, and format of the electronic short notice required by paragraph (c) of this section must be substantially similar to Model Clauses A-6 and A-7 in appendix A to this part. The content, order, and format of the electronic short notice required by paragraph (e) of this section must be substantially similar to Model Clause A-8 in appendix A to this part.

(8) *Foreign language disclosures.* Disclosures required under this section may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) *Payment notice*—(1) *General.* Except as provided in paragraph (b)(2) of this section, prior to initiating a payment transfer from a consumer's account, a lender must provide to the consumer a payment notice in accordance with the requirements in this paragraph (b), as applicable.

(2) *Exceptions.* The payment notice need not be provided when the lender initiates:

(i) A payment transfer in connection with a covered loan made under § 1041.11 or § 1041.12;

(ii) The first payment transfer from a consumer's account after obtaining consumer consent pursuant to § 1041.14(c), regardless of whether any of the conditions in paragraph (b)(5) of this section apply; or

(iii) A single immediate payment transfer initiated at the consumer's request in accordance with § 1041.14(a)(2).

(3) *Timing*—(i) *Mail.* If the lender provides the payment notice by mail, the lender must mail the notice no earlier than 10 business days and no later than six business days prior to initiating the transfer.

(ii) *Electronic delivery.* (A) If the lender provides the payment notice through electronic delivery, the lender must send the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.

(B) If, after providing the payment notice through electronic delivery pursuant to the timing requirements in paragraph (b)(3)(ii)(A) of this section, the lender loses the consumer's consent to receive the notice through a particular electronic delivery method according to paragraph (a)(4)(ii) of this section, the lender must provide the notice before any future payment attempt, if applicable, through alternate means.

(iii) *In person.* If the lender provides the notice in person, the lender must provide the notice no earlier than seven business days and no later than three business days prior to initiating the transfer.

(4) *Content requirements.* The notice must contain the following information and statements, as applicable, using language substantially similar to the language set forth in Model Forms A-3 and A-4 in appendix A to this part:

(i) *Identifying statement*—(A) *Upcoming withdrawal.* If none of the additional content requirements set forth in paragraph (b)(5) of this section apply, the statement, "Upcoming Withdrawal Notice," using that phrase, and, in the same statement, the name of the lender providing the notice.

(B) *Unusual withdrawal.* If any of the additional content requirements in paragraph (b)(5) of this section apply, the statement, "Alert: Unusual Withdrawal," using that phrase, and, in the same statement, the name of the lender that is providing the notice.

(ii) *Transfer terms.* (A) *Date.* Date that the lender will initiate the transfer.

(B) *Amount.* Dollar amount of the transfer.

(C) *Consumer account.* Sufficient information to permit the consumer to identify the account from which the funds will be transferred. The lender must not provide the complete account number of the consumer, but may use a truncated version similar to Model Form A-5 in appendix A to this part.

(D) *Loan identification information.* Sufficient information to permit the consumer to identify the covered loan associated with the transfer.

(E) *Payment channel.* Payment channel of the transfer.

(F) *Check number.* If the transfer will be initiated by a signature or paper check, remotely created check (as defined in Regulation CC, 12 CFR 229.2(fff)), or remotely created payment order (as defined in 16 CFR 310.2 (cc)), the check number associated with the transfer.

(iii) *Annual percentage rate.* Annual percentage rate of the covered loan, as disclosed at consummation pursuant to the requirements in Regulation Z, 12 CFR 1026.6(b)(2)(i) or 1026.18(e), as applicable, unless the transfer is for an unusual attempt under paragraph (b)(5) of this section.

(iv) *Payment breakdown.* In a tabular form:

(A) *Payment breakdown heading.* A heading with the statement "Payment Breakdown," using that phrase.

(B) *Principal.* The amount of the payment that will be applied to principal.

(C) *Interest.* The amount of the payment that will be applied to accrued interest on the loan.

(D) *Fees.* If applicable, the amount of the payment that will be applied to fees.

(E) *Other charges.* If applicable, the amount of the payment that will be applied to other charges.

(F) *Amount.* The statement "Total Payment Amount," using that phrase, and the total dollar amount of the payment as provided in paragraph (b)(4)(ii)(B) of this section.

(G) *Explanation of interest-only or negatively amortizing payment.* If applicable, a statement explaining that the payment will not reduce principal, using the applicable phrase "When you make this payment, your principal balance will stay the same and you will not be closer to paying off your loan" or "When you make this payment, your principal balance will increase and you will not be closer to paying off your loan."

(v) *Lender name and contact information.* Name of the lender, the name under which the transfer will be initiated (if different from the consumer-facing name of the lender), and two different forms of lender contact information that may be used by the consumer to obtain information about the consumer's loan.

(5) *Additional content requirements for unusual attempts.* If any of the conditions specified in this paragraph (b)(5) are triggered, the notice must also contain the following content, as applicable, in a form substantially similar to the form in Model Form A-4 in appendix A to this part:

(i) *Varying amount.* If the amount of a transfer will vary in amount from the regularly scheduled payment amount, a statement that the transfer will be for a larger or smaller amount than the regularly scheduled payment amount, as applicable.

(ii) *Date other than date of regularly scheduled payment.* If the payment transfer date is not a date on which a regularly scheduled payment is due under the terms of the loan agreement, a statement that the transfer will be initiated on a date other than the date of a regularly scheduled payment.

(iii) *Different payment channel.* If the payment channel will differ from the payment channel of the transfer directly preceding it, a statement that the transfer will be initiated through a different payment channel and a statement of the payment channel used for the prior transfer.

(iv) *For purpose of re-initiating returned transfer.* If the transfer is for the purpose of re-initiating a returned transfer, a statement that the lender is re-initiating a returned transfer, a statement of the date and amount of the previous unsuccessful attempt, and a statement of the reason for the return.

(c) *Electronic short notice.* (1) *General.* When the consumer has consented to receive disclosures through electronic delivery, the lender may provide the payment notice required by paragraph (b) of this section through electronic delivery only if it also provides an electronic short notice in accordance with the following requirements:

(2) *Content.* The electronic short notice required by this paragraph (c) must contain the following information and statements, as applicable, in a form substantially similar to Model Clause A-6 in appendix A to this part:

(i) *Identifying statement,* as required under paragraph (b)(4)(i) of this section;

(ii) *Transfer terms.* (A) *Date,* as required under paragraph (b)(4)(ii)(A) of this section;

(B) *Amount,* as required under paragraph (b)(4)(ii)(B) of this section;

(C) *Consumer account,* as required and limited under paragraph (b)(4)(ii)(C) of this section;

(iii) *Web site URL.* The unique URL of a Web site that the consumer may use to access the full payment notice required by paragraph (b) of this section.

(3) *Additional content requirements.* If any of the conditions for unusual attempts specified in paragraph (b)(5) of this section are triggered, the electronic short notice must also contain the following information and statements, as applicable, using language substantially similar to the language in Model Clause A-7 in appendix A to this part:

(i) *Varying amount,* as defined under paragraph (b)(5)(i) of this section;

(ii) *Date other than due date of regularly scheduled payment,* as defined under paragraph (b)(5)(ii) of this section; and

(iii) *Different payment channel,* as defined under paragraph (b)(5)(iii) of this section.

(d) *Consumer rights notice*—(1) *General.* After a lender initiates two consecutive failed payment transfers from a consumer's account as described in § 1041.14(b), the lender must provide to the consumer a consumer rights notice in accordance with the following requirements:

(2) *Timing.* The lender must send the notice no later than three business days after it receives information that the second consecutive attempt has failed.

(3) *Content requirements.* The notice must contain the following information and statements, using language substantially similar to the language set forth in Model Form A-5 in appendix A to this part:

(i) *Identifying statement.* A statement that the lender, identified by name, is no longer permitted to withdraw loan payments from the consumer's account.

(ii) *Last two attempts were returned.* A statement that the lender's last two attempts to withdraw payment from the consumer's account were returned due to non-sufficient funds.

(iii) *Consumer Account.* Sufficient information to permit the consumer to identify the account from which the unsuccessful payment attempts were made. The lender must not provide the complete account number of the consumer, but may use a truncated version similar to Model Form A-5 in appendix A to this part.

(iv) *Loan identification information.* Sufficient information to permit the consumer to identify the covered loan associated with the unsuccessful payment attempts.

(v) *Statement of Federal law prohibition.* A statement, using that phrase, that in order to protect the consumer's account, Federal law prohibits the lender from initiating further payment transfers without the consumer's permission.

(vi) *Contact about choices.* A statement that the lender may be in contact with the consumer about payment choices going forward.

(vii) *Previous unsuccessful payment attempts.* In a tabular form:

(A) *Previous payment attempts heading.* A heading with the statement "previous payment attempts."

(B) *Payment due date.* The scheduled due date of each previous unsuccessful payment transfer attempted by the lender.

(C) *Date of attempt.* The date of each previous unsuccessful payment transfer initiated by the lender.

(D) *Amount.* The amount of each previous unsuccessful payment transfer initiated by the lender.

(E) *Fees.* The fees charged by the lender for each unsuccessful payment attempt, if applicable, with an indication that these fees were charged by the lender.

(v) *CFPB information.* A statement, using that phrase, that the Consumer Financial Protection Bureau created this notice, a statement that the CFPB is a Federal government agency, and the URL to a relevant portion of the CFPB Web site. This statement must be the last piece of information provided in the notice.

(e) *Electronic short notice*—(1) *General.* When the consumer has consented to receive disclosures through electronic delivery, the lender may provide the consumer rights notice required by paragraph (d) through electronic delivery only if it also provides an electronic short notice in accordance with the following requirements:

(2) *Content.* The notice must contain the following information and statements, as applicable, using language substantially similar to the language set forth in Model Clause A-8 in appendix A to this part:

(i) *Identifying statement,* as required under paragraph (d)(3)(i) of this section;

(ii) *Last two attempts were returned,* as required under paragraph (d)(3)(ii) of this section;

(iii) *Consumer account,* as required and limited under paragraph (d)(3)(iii) of this section;

(iv) *Statement of Federal law prohibition,* as required under paragraph (d)(3)(v) of this section; and

(v) *Web site URL.* The unique URL of a Web site that the consumer may use to access the full consumer rights notice required by paragraph (d) of this section.

Subpart E—Information Furnishing, Recordkeeping, Anti-Evasion, and Severability

§ 1041.16 Information furnishing requirements.

(a) *Loans subject to furnishing requirement.* For each covered loan a lender makes other than a covered loan that is made under § 1041.11 or § 1041.12, the lender must furnish the information concerning the loan described in paragraph (c) of this section to each information system described in paragraph (b) of this section.

(b) *Information systems to which information must be furnished.* (1) A lender must furnish information as required in paragraphs (a) and (c) of this section to each information system that, as of the date the loan is consummated:

(i) Has been registered with the Bureau pursuant to § 1041.17(c)(2) for 120 days or more; or

(ii) Has been provisionally registered with the Bureau pursuant to § 1041.17(d)(1) for 120 days or more or subsequently has become registered with the Bureau pursuant to § 1041.17(d)(2).

(2) The Bureau will publish on its Web site and in the **Federal Register** notice of the provisional registration of an information system pursuant to § 1041.17(d)(1), registration of an information system pursuant to § 1041.17(c)(2) or (d)(2), and suspension or revocation of the provisional registration or registration of an information system pursuant to § 1041.17(g). For purposes of paragraph (b)(1) of this section, an information system is provisionally registered or registered, and its provisional registration or registration is suspended or revoked, on the date that the Bureau publishes notice of such provisional registration, registration, suspension, or revocation on its Web site. The Bureau will maintain on the Bureau's Web site a current list of information systems provisionally registered pursuant to § 1041.17(d)(1) and registered pursuant to § 1041.17(c)(2) and (d)(2).

(c) *Information to be furnished.* A lender must furnish the information described in this paragraph, at the times described in this paragraph, concerning each covered loan as required in paragraphs (a) and (b) of this section. A lender must furnish the information in a format acceptable to each information system to which it must furnish information.

(1) *Information to be furnished at loan consummation.* A lender must furnish the following information no later than the date on which the loan is consummated or as close in time as feasible to the date the loan is consummated:

(i) Information necessary to uniquely identify the loan;

(ii) Information necessary to allow the information system to identify the specific consumer(s) responsible for the loan;

(iii) Whether the loan is a covered short-term loan, a covered longer-term loan, or a covered longer-term balloon-payment loan;

(iv) Whether the loan is made under § 1041.5, § 1041.7, or § 1041.9, as applicable;

(v) For a covered short-term loan, the loan consummation date;

(vi) For a loan made under § 1041.7, the principal amount borrowed;

(vii) For a loan that is closed-end credit:

(A) The fact that the loan is closed-end credit;

(B) The date that each payment on the loan is due; and

(C) The amount due on each payment date.

(viii) For a loan that is open-end credit:

(A) The fact that the loan is open-end credit;

(B) The credit limit on the loan;

(C) The date that each payment on the loan is due; and

(D) The minimum amount due on each payment date.

(2) *Information to be furnished while loan is an outstanding loan.* During the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to this section within a reasonable period of the event that causes the information previously furnished to be out of date.

(3) *Information to be furnished when loan ceases to be an outstanding loan.* A lender must furnish the following information no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date the loan ceases to be an outstanding loan:

(i) The date as of which the loan ceased to be an outstanding loan; and

(ii) For a covered short-term loan:

(A) Whether all amounts owed in connection with the loan were paid in full, including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit; and

(B) If all amounts owed in connection with the loan were paid in full, the amount paid on the loan, including the amount financed and charges included in the total cost of credit but excluding any charges excluded from the total cost of credit.

§ 1041.17 Registered information systems.

(a) *Definitions.* (1) *Consumer report* has the same meaning as in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(2) *Federal consumer financial law* has the same meaning as in section 1002(14) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5481(14).

(b) *Eligibility criteria for information systems.* An entity is eligible to be a provisionally registered information system pursuant to paragraph (d)(1) of this section or a registered information system pursuant to paragraph (c)(2) or (d)(2) of this section only if the Bureau determines that the following conditions are satisfied:

(1) *Receiving capability.* The entity possesses the technical capability to receive information lenders must

furnish pursuant to § 1041.16 immediately upon the furnishing of such information and uses reasonable data standards that facilitate the timely and accurate transmission and processing of information in a manner that does not impose unreasonable costs or burdens on lenders.

(2) *Reporting capability.* The entity possesses the technical capability to generate a consumer report containing, as applicable for each unique consumer, all information described in § 1041.16 substantially simultaneous to receiving the information from a lender.

(3) *Performance.* The entity will perform or performs in a manner that facilitates compliance with and furthers the purposes of this part.

(4) *Federal consumer financial law compliance program.* The entity has developed, implemented, and maintains a program reasonably designed to ensure compliance with all applicable Federal consumer financial laws, which includes written policies and procedures, comprehensive training, and monitoring to detect and to promptly correct compliance weaknesses.

(5) *Independent assessment of Federal consumer financial law compliance program.* The entity provides to the Bureau in its application for provisional registration or registration a written assessment of the Federal consumer financial law compliance program described in paragraph (b)(4) of this section and such assessment:

(i) Sets forth a detailed summary of the Federal consumer financial law compliance program that the entity has implemented and maintains;

(ii) Explains how the Federal consumer financial law compliance program is appropriate for the entity's size and complexity, the nature and scope of its activities, and risks to consumers presented by such activities;

(iii) Certifies that, in the opinion of the assessor, the Federal consumer financial law compliance program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under all Federal consumer financial laws; and

(iv) Certifies that the assessment has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor's independent judgment in performing assessments.

(6) *Information security program.* The entity has developed, implemented, and maintains a comprehensive information security program that complies with the Standards for Safeguarding Customer Information, 16 CFR part 314.

(7) *Independent assessment of information security program.* (i) The entity provides to the Bureau in its application for provisional registration or registration and on at least a biennial basis thereafter, a written assessment of the information security program described in paragraph (b)(6) of this section and such assessment:

(A) Sets forth the administrative, technical, and physical safeguards that the entity has implemented and maintains;

(B) Explains how such safeguards are appropriate to the entity's size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue;

(C) Explains how the safeguards that have been implemented meet or exceed the protections required by the Standards for Safeguarding Customer Information, 16 CFR part 314;

(D) Certifies that, in the opinion of the assessor, the information security program is operating with sufficient effectiveness to provide reasonable assurance that the entity is fulfilling its obligations under the Standards for Safeguarding Customer Information, 16 CFR part 314; and

(E) Certifies that the assessment has been conducted by a qualified, objective, independent third-party individual or entity that uses procedures and standards generally accepted in the profession, adheres to professional and business ethics, performs all duties objectively, and is free from any conflicts of interest that might compromise the assessor's independent judgment in performing assessments.

(ii) Each written assessment obtained and provided to the Bureau on at least a biennial basis pursuant to paragraph (b)(7)(i) of this section must be completed and provided to the Bureau within 60 days after the end of the period to which the assessment applies.

(8) *Bureau supervisory authority.* The entity acknowledges it is, or consents to being, subject to the Bureau's supervisory authority.

(c) *Registration of information systems prior to effective date of § 1041.16.* (1) *Preliminary approval.* Prior to the effective date of § 1041.16, the Bureau may preliminarily approve an entity for registration only if the entity submits an application for preliminary approval to the Bureau by the deadline set forth in paragraph (c)(3)(i) of this section containing information sufficient for the Bureau to determine that the entity is reasonably likely to satisfy the conditions set forth in paragraph (b) of this section by the deadline set forth in paragraph (c)(3)(ii) of this section. The assessments described in paragraphs (b)(5) and (b)(7) of this section need not be included with an application for preliminary approval for registration or completed prior to the submission of the application.

(2) *Registration.* Prior to the effective date of § 1041.16, the Bureau may approve the application of an entity to be a registered information system only if:

(i) The entity received preliminary approval pursuant to paragraph (c)(1) of this section; and

(ii) The entity submits an application to the Bureau by the deadline set forth in paragraph (c)(3)(ii) of this section that contains information and documentation sufficient for the Bureau to determine that the entity satisfies the conditions set forth in paragraph (b) of this section. The Bureau may require additional information and documentation to facilitate this determination or otherwise to assess whether registration of the entity would pose an unreasonable risk to consumers.

(3) *Deadlines.* (i) The deadline to submit an application for preliminary approval for registration pursuant to paragraph (c)(1) of this section is 30 days from the effective date of this section.

(ii) The deadline to submit an application to be a registered information system pursuant to paragraph (c)(2) of this section is 90 days from the date preliminary approval for registration is granted.

(iii) The Bureau may waive the deadlines set forth in this paragraph.

(d) *Registration of information systems on or after effective date of § 1041.16.* (1) *Provisional registration.* On or after the effective date of § 1041.16, the Bureau may approve an entity to be a provisionally registered information system only if the entity submits an application to the Bureau that contains information and documentation sufficient for the Bureau to determine that the entity satisfies the conditions set forth in paragraph (b) of this section. The Bureau may require additional information and documentation to facilitate this determination or otherwise to assess whether provisional registration of the entity would pose an unreasonable risk to consumers.

(2) *Registration.* An information system that is provisionally registered

pursuant to paragraph (d)(1) of this section shall automatically become a registered information system pursuant to this paragraph (d)(2) upon the expiration of the 180-day period commencing on the date the information system is provisionally registered. For purposes of this paragraph, an information system is provisionally registered on the date that the Bureau publishes notice of the provisional registration on the Bureau's Web site.

(e) *Denial of application.* The Bureau will deny the application of an entity seeking preliminary approval for registration under paragraph (c)(1) of this section, registration under paragraph (c)(2) of this section, or provisional registration under paragraph (d)(1) of this section, if the Bureau determines, as applicable, that:

(1) The entity does not satisfy the conditions set forth in paragraph (b) of this section, or, in the case of an entity seeking preliminary approval for registration, is not reasonably likely to satisfy the conditions as of the deadline set forth in paragraph (c)(3)(ii) of this section;

(2) The entity's application is untimely or materially inaccurate or incomplete; or

(3) Preliminary approval, provisional registration, or registration of the entity would pose an unreasonable risk to consumers.

(f) *Notice of material change.* An entity that is a provisionally registered or registered information system must provide to the Bureau in writing a description of any material change to information contained in its application for registration submitted pursuant to paragraph (c)(2) of this section or provisional registration submitted pursuant to paragraph (d)(1) of this section, or to information previously provided to the Bureau pursuant to this paragraph, within 14 days of such change.

(g) *Suspension and Revocation.* (1) The Bureau will suspend or revoke an entity's preliminary approval for registration pursuant to paragraph (c)(1) of this section, provisional registration pursuant to paragraph (d)(1) of this section, or registration pursuant to paragraphs (c)(2) or (d)(2) of this section if the Bureau determines:

(i) That the entity has not satisfied or no longer satisfies the conditions described in paragraph (b) of this section or has not complied with the requirement described in paragraph (f) of this section; or

(ii) That preliminary approval, provisional registration, or registration of the entity poses an unreasonable risk to consumers.

(2) The Bureau may require additional information and documentation from an entity if it has reason to believe suspension or revocation under paragraph (g)(1) of this section may be warranted.

(3) Except in cases of willfulness or those in which the public interest requires otherwise, prior to suspension or revocation under paragraph (g)(1) of this section, the Bureau will provide written notice of the facts or conduct that may warrant the suspension or revocation and an opportunity for the entity or information system to demonstrate or achieve compliance with this section or otherwise address the Bureau's concerns.

(4) The Bureau will revoke an entity's preliminary approval for registration, provisional registration, or registration if the entity submits a written request to the Bureau that its preliminary approval, provisional registration, or registration be revoked.

(5) For purposes of §§ 1041.5 through 1041.7, 1041.9, and 1041.10, suspension or revocation of an information system's registration is effective five days after the date that the Bureau publishes notice of the suspension or revocation on the Bureau's Web site. For purposes of § 1041.16(b)(1), suspension or revocation of an information system's provisional registration or registration is effective on the date that the Bureau publishes notice of the suspension or revocation on the Bureau's Web site. The Bureau will also publish notice of a suspension or revocation in the **Federal Register**.

§ 1041.18 Compliance program and record retention.

(a) *Compliance program.* A lender making a covered loan must develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements in this part. These written policies and procedures must be appropriate to the size and complexity of the lender and its affiliates, and the nature and scope of the covered loan lending activities of the lender and its affiliates.

(b) *Record retention.* A lender must retain evidence of compliance with this part for 36 months after the date on which a covered loan ceases to be an outstanding loan.

(1) *Retention of loan agreement and documentation obtained in connection with a covered loan.* To comply with the requirements in paragraph (b), a lender must retain or be able to reproduce an image of the loan agreement and documentation obtained in connection with a covered loan, including the following documentation as applicable:

(i) Consumer report from an information system registered pursuant to § 1041.17(c)(2) or (d)(2);

(ii) Verification evidence, as described in §§ 1041.5(c)(3)(ii) and 1041.9(c)(3)(ii);

(iii) Any written statement obtained from the consumer, as described in §§ 1041.5(c)(3)(i) and 1041.9(c)(3)(i);

(iv) Authorization of additional payment transfer, as described in § 1041.14(c)(3)(iii); and

(v) Underlying one-time electronic transfer authorization or underlying signature check, as described in § 1041.14(d)(2).

(2) *Electronic records in tabular format regarding origination calculations and determinations for a covered loan.* To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information:

(i) For a covered short-term loan made under § 1041.5:

(A) The projection made by the lender of the amount and timing of a consumer's net income;

(B) The projections made by the lender of the amounts and timing of a consumer's major financial obligations;

(C) Calculated residual income; and

(D) Estimated basic living expenses for the consumer;

(ii) For a covered longer-term loan made under § 1041.9:

(A) The projection made by the lender of the amount and timing of a consumer's net income;

(B) The projections made by the lender of the amounts and timing of a consumer's major financial obligations;

(C) Calculated residual income; and

(D) Estimated basic living expenses for the consumer.

(iii) Whether a non-covered bridge loan was outstanding in the preceding 30 days;

(3) *Electronic records in tabular format for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan.* To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

(i) For a consumer who qualifies for the exception in § 1041.6(b)(2) to the presumption of unaffordability in § 1041.6(b)(1) for a sequence of covered short-term loans:

(A) Percentage difference between the amount to be paid in connection with the new covered short-term loan (including the amount financed, charges included in the total cost of credit, and charges excluded from the total cost of credit) and:

(B) Either:

(*1*) The amount that the consumer paid in full on the prior covered short-term loan (including the amount financed and charges included in the total cost of credit, but excluding any charges excluded from the total cost of credit); or

(*2*) The amount that the consumer paid on the prior covered short-term loan that is being rolled over or renewed (including the amount financed and charges included in the total cost of credit but excluding any charges that are excluded from the total cost of credit);

(C) Loan term in days of the new covered short-term loan; and

(D) The term in days of the period over which the consumer made payment or payments on the prior covered short-term loan;

(ii) For a consumer who overcomes a presumption of unaffordability in § 1041.6 for a covered short-term: Dollar difference between the consumer's financial capacity projected for the new covered short-term loan and the consumer's financial capacity since obtaining the prior loan;

(iii) For a consumer who qualifies for an exception in § 1041.10(b)(2) to the presumption of unaffordability in § 1041.10(b)(1) for a covered longer-term loan following a covered short-term or covered longer-term balloon-payment loan: Percentage difference between the size of the largest payment on the covered longer-term loan and the largest payment on the prior covered short-term or covered longer-term balloon-payment loan;

(iv) For a consumer who qualifies for an exception in § 1041.10(c)(2) to the presumption of unaffordability in § 1041.10(c)(1) for a covered longer-term loan during an unaffordable outstanding loan:

(A) Percentage difference between the size of the largest payment on the covered longer-term loan and the size of the smallest payment on the outstanding loan; and

(B) Percentage difference between the total cost of credit on the covered longer-term loan and the total cost of credit on the outstanding loan;

(v) For a consumer who overcomes a presumption of unaffordability in § 1041.10 for a covered longer-term loan: Dollar difference between the consumer's financial capacity projected for the new covered longer-term loan and the consumer's financial capacity during the 30 days prior to the lender's determination.

(4) *Electronic records in tabular format regarding loan type and terms.* To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

(i) As applicable, the information listed in § 1041.16(c)(1)(i) through (iii), § 1041.16(c)(1)(v) through (viii), and§ 1041.16(c)(2);

(ii) Whether the loan is made under § 1041.5, § 1041.7, § 1041.9, § 1041.11, or § 1041.12;

(iii) Leveraged payment mechanism(s) obtained by the lender from the consumer;

(iv) Whether the lender obtained vehicle security from the consumer; and

(v) For a covered short-term loan made under § 1041.5 or § 1041.7: Loan number in loan sequence.

(5) *Electronic records in tabular format regarding payment history and loan performance.* To comply with the requirements in this paragraph (b), a lender must retain electronic records in tabular format that include the following information for a covered loan:

(i) History of payments received and attempted payment transfers, as defined in § 1041.14(a)(1):

(A) Date of receipt of payment or attempted payment transfer;

(B) Amount of payment due;

(C) Amount of attempted payment transfer;

(D) Amount of payment received or transferred; and

(E) Payment channel used for attempted payment transfer;

(ii) If an attempt to transfer funds from a consumer's account was subject to the prohibition in § 1041.14(b)(1), whether the authorization to initiate a payment transfer was obtained from the consumer in accordance with the requirements in § 1041.14(c) or (d);

(iii) If a full payment, including the amount financed, charges included in the cost of credit, and charges excluded from the cost of credit, was not received or transferred by the contractual due date, the maximum number of days, up to 180 days, any full payment was past due;

(iv) For a covered longer-term loan made under § 1041.12: Whether the loan was charged off;

(v) For a loan with vehicle security: Whether repossession of the vehicle was initiated;

(vi) Date of last or final payment received; and

(vii) The information listed in § 1041.16(c)(3)(i) and (ii).

§ 1041.19 Prohibition against evasion.

A lender must not take any action with the intent of evading the requirements of this part.

§ 1041.20 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Bureau's intention that the remaining provisions shall continue in effect.

Appendix A to Part 1041—Model Forms

A-1 Model Form for First § 1041.7(e) Loan

WILLOW LENDING
800-555-5555
willowlending.com

Notice of restrictions on future loans

If you are unsure whether you will be able to pay $360.00 by November 12th, 2016, you should not take out this loan.

After you repay this loan, any similar loan you take out within the next 30 days will have to be smaller. This restriction is required by federal law.

Borrowing limits:

Loan order	Maximum amount that you will be able to borrow
Loan #1 (*this loan*)	$300.00
Loan #2	$200.00
Loan #3	$100.00
Loan #4	Not allowed

A-2 Model Form for Third § 1041.7(e) Loan

WILLOW LENDING
800-555-5555
willowlending.com

Notice of borrowing limits on this loan and future loans

Our records show that you have had two similar loans without taking a 30-day break. Under federal law, this loan must be smaller than your prior loans. And after you repay this loan, **you will not be able to take out another similar loan for at least 30 days**.

A-3 Model Form for Full Upcoming Payment Notice under § 1041.15(b)

WILLOW LENDING
800-555-5555
willowlending.com

Upcoming Withdrawal Notice from Willow Lending

On November 12, 2016, Willow Lending will attempt to withdraw a payment of $80 from your account ending in 0022. The payment will be withdrawn by check, using check #999.

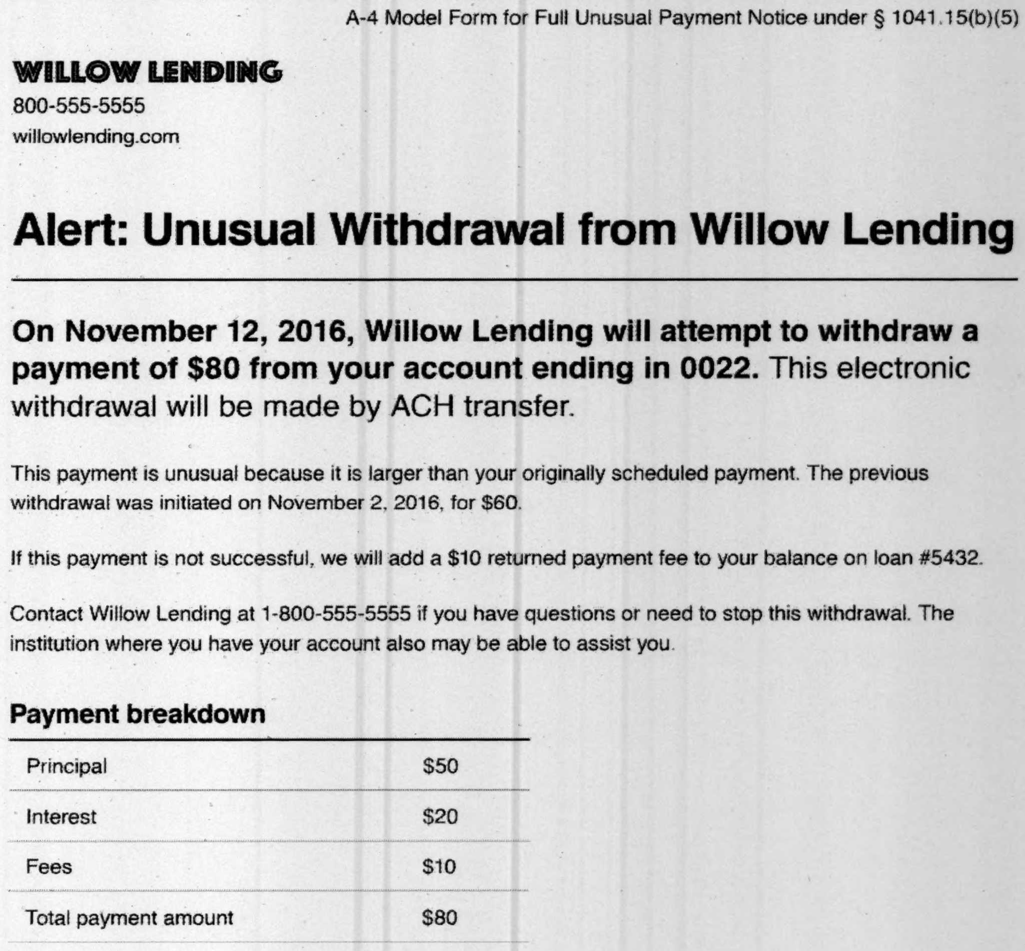
If this payment is not successful, we will add a $10 returned payment fee to your balance on loan #5432. This loan was made to you at a 533.20% APR.

Contact Willow Lending at 1-800-555-5555 if you have questions or need to stop this withdrawal. The institution where you have your account also may be able to assist you.

Payment breakdown

Principal now	$0
Interest	$80
Total payment amount	$80

When you make this payment, your principal balance will **stay the same** and you will **not** be closer to paying off your loan.



A-4 Model Form for Full Unusual Payment Notice under § 1041.15(b)(5)

WILLOW LENDING
800-555-5555
willowlending.com

Alert: Unusual Withdrawal from Willow Lending

On November 12, 2016, Willow Lending will attempt to withdraw a payment of $80 from your account ending in 0022. This electronic withdrawal will be made by ACH transfer.

This payment is unusual because it is larger than your originally scheduled payment. The previous withdrawal was initiated on November 2, 2016, for $60.

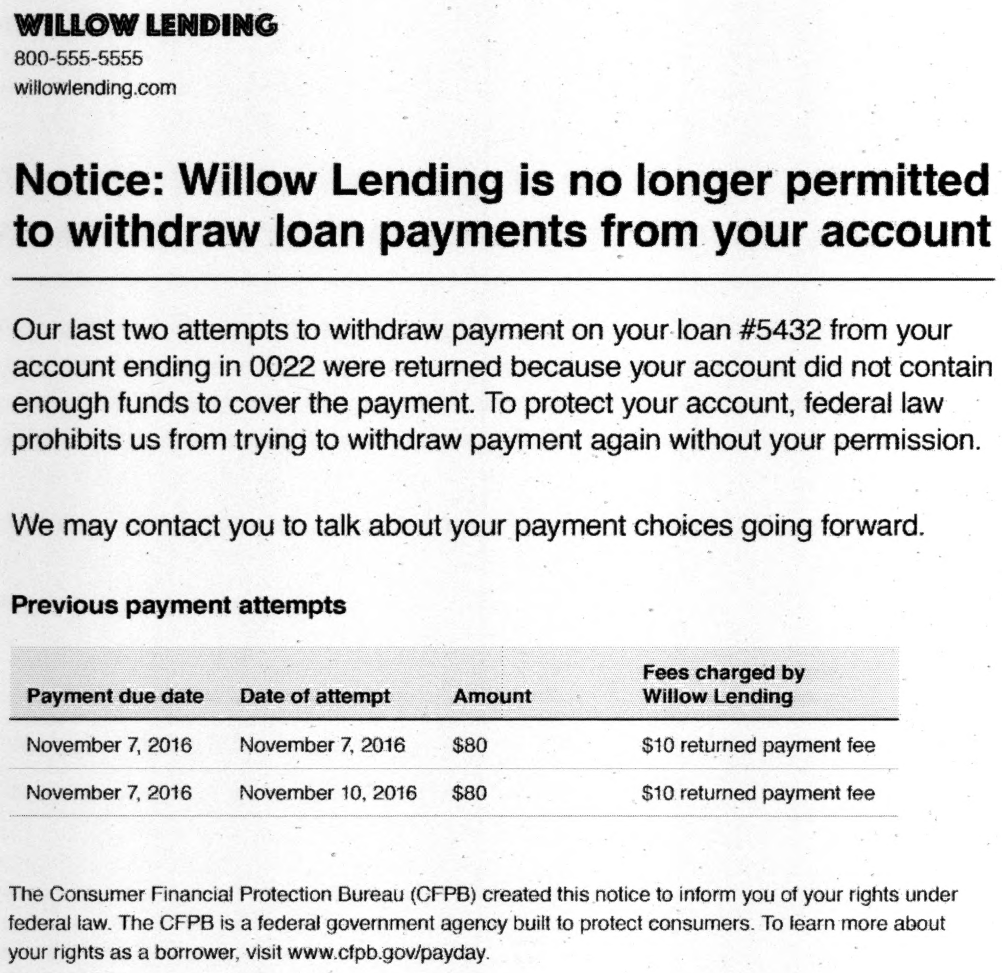
If this payment is not successful, we will add a $10 returned payment fee to your balance on loan #5432.

Contact Willow Lending at 1-800-555-5555 if you have questions or need to stop this withdrawal. The institution where you have your account also may be able to assist you.

Payment breakdown

Principal	$50
Interest	$20
Fees	$10
Total payment amount	$80

A-5 Model Form for Full Consumer Rights Notice under § 1041.15(d)



WILLOW LENDING
800-555-5555
willowlending.com

Notice: Willow Lending is no longer permitted to withdraw loan payments from your account

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Our last two attempts to withdraw payment on your loan #5432 from your account ending in 0022 were returned because your account did not contain enough funds to cover the payment. To protect your account, federal law prohibits us from trying to withdraw payment again without your permission.

We may contact you to talk about your payment choices going forward.

Previous payment attempts

Payment due date	Date of attempt	Amount	Fees charged by Willow Lending
November 7, 2016	November 7, 2016	$80	$10 returned payment fee
November 7, 2016	November 10, 2016	$80	$10 returned payment fee

The Consumer Financial Protection Bureau (CFPB) created this notice to inform you of your rights under federal law. The CFPB is a federal government agency built to protect consumers. To learn more about your rights as a borrower, visit www.cfpb.gov/payday.

A-6 Model Clause for Upcoming Payment Electronic Short Notice under § 1041.15(c)

Subject (applicable to email only)
Upcoming Withdrawal Notice from Willow Lending

Body
Upcoming Withdrawal Notice from Willow Lending
On Nov 12, 2016, we will attempt to withdraw a payment of $80 from your account ending in 0022.

View the details at willowlending.com/xox302ksw.

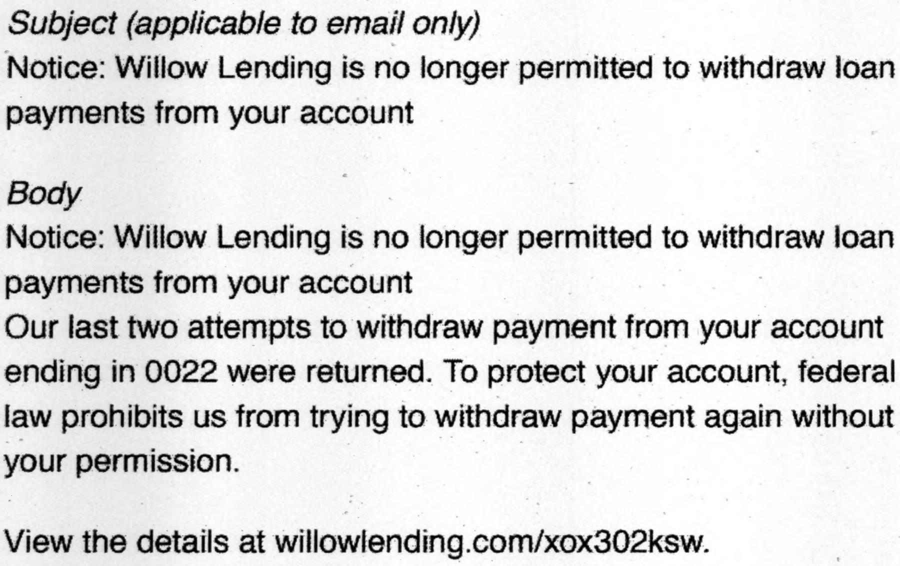
A-7 Model Clause for Unusual Payment Electronic Short Notice under § 1041.15(c)(3)

Subject (applicable to email only)
Alert: Unusual Withdrawal from Willow Lending

Body
Alert: Unusual Withdrawal from Willow Lending
On Nov 12, 2016, we will attempt to withdraw a payment of $80 from your account ending in 0022. This payment is unusual because it is larger than your originally scheduled payment.

View the details at willowlending.com/xox302ksw.

A-8 Model Clause for Consumer Rights Electronic Short Notice under § 1041.15(e)



Subject (applicable to email only)

Notice: Willow Lending is no longer permitted to withdraw loan payments from your account

Body

Notice: Willow Lending is no longer permitted to withdraw loan payments from your account

Our last two attempts to withdraw payment from your account ending in 0022 were returned. To protect your account, federal law prohibits us from trying to withdraw payment again without your permission.

View the details at willowlending.com/xox302ksw.

Supplement I to Part 1041—Official Interpretations

Section 1041

Section 1041.2—Definitions

2(a)(1) Account

1. *In general.* Institutions may rely on 12 CFR 1005.2(b) and its related commentary in determining the meaning of account.

2(a)(3) Closed-End Credit

1. *In general.* Institutions may rely on 12 CFR 1026.2(a)(10) and its related commentary in determining the meaning of closed-end credit, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11).

2(a)(5) Consummation

1. *New loan.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law. A contractual commitment agreement, for example, that under applicable law binds the consumer to the loan terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a non-refundable fee) unless applicable law holds otherwise.

2. *Modification of existing loan.* A modification of an existing loan constitutes a consummation for purposes of this rule in certain circumstances. If the principal amount of an existing loan is increased, or if the total amount available under an open-end credit plan is increased, the modification is consummated as of the time that the consumer becomes contractually obligated on such a modification or increase. In those cases, the modification must comply with the requirements of § 1041.5(b) or § 1041.9(b), as appropriate. A loan modification is not considered consummated under § 1041.2(a)(5) if the modification reduces the principal amount or amount available under an open-end credit plan, or if the modification results only in the consumer receiving additional time in which to repay the loan. Providing a cost-free "off-ramp" or repayment plan to a consumer who cannot repay a loan during the allotted term of the loan is a modification of an existing loan—not a new loan—that results only in the consumer receiving additional time in which to repay the loan. Thus providing a no-cost repayment plan does not involve a consummation.

2(a)(7) Covered Longer-Term Balloon-Payment Loan

1. *Loans repayable in a single payment.* A loan described in § 1041.3(b)(2) is considered to be a covered longer-term balloon-payment loan under § 1041.2(a)(7) if the consumer must repay the entire amount of the loan in a single payment.

2. *Payments more than twice as large as other payments.* A loan described in § 1041.3(b)(2) is considered to be a covered longer-term balloon-payment loan under § 1041.2(a)(7) if any one payment is more than twice as large as any other payment(s) under the loan. All required payments of principal and interest (or interest only, depending on the loan features) due under the loan are used to determine whether a particular payment is more than twice as large as another payment, regardless of whether the payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan.

3. *Charges excluded.* Charges for actual unanticipated late payments, for exceeding a credit limit, or for delinquency, default, or a similar occurrence that may be added to a payment are excluded from the determination of whether the loan is repayable in a single payment or a particular payment is more than twice as large as another payment. Likewise, sums that are accelerated and due upon default are excluded from the determination of whether the loan is repayable in a single payment or a particular payment is more than twice as large as another payment.

2(a)(9) Credit

1. *In general.* Institutions may rely on 12 CFR 1026.2(a)(14) and its related commentary in determining the meaning of credit.

2(a)(10) Electronic Fund Transfer

1. *In general.* Institutions may rely on 12 CFR 1005.3(b) and its related commentary in determining the meaning of electronic fund transfer.

2(a)(11) Lender

1. *Regularly makes loans.* The test for determining whether a person regularly makes loans for personal, family, or household purposes is explained in Regulation Z, 12 CFR 1026.2(a)(17)(v). Any loan to a consumer for personal, family, or household purposes, whether or not the loan is a covered loan under part 1041, counts toward the numeric threshold for

determining whether a person regularly makes loans.

2(a)(13) Non-Covered Bridge Loan

1. *Applicability.* A non-recourse pawn loan is a non-covered bridge loan only to the extent that it meets the criteria set forth in § 1041.3(e)(5). A pawn loan that does not meet the criteria set forth in § 1041.3(e)(5), either because the consumer retains possession of the pawned item during the loan term or because the lender has recourse in the event the consumer does not redeem the pawned item, is not a non-covered bridge loan. Instead, such a pawn loan is a covered loan to the extent it meets the criteria set forth in § 1041.3(b).

2(a)(14) Open-End Credit

1. *In general.* Institutions may rely on 12 CFR 1026.2(a)(20) and its related commentary in determining the meaning of open-end credit, but without regard to whether the credit is consumer credit, as that term is defined in 12 CFR 1026.2(a)(12), is extended by a creditor, as that term is defined in 12 CFR 1026.2(a)(17), or is extended to a consumer, as that term is defined in 12 CFR 1026.2(a)(11). For the purposes of defining open-end credit under part 1041, the term credit, as defined in proposed § 1041.2(a)(9), would be substituted for the term consumer credit in the Regulation Z definition of open-end credit; the term lender, as defined in proposed § 1041.2(a)(11), would be substituted for the term creditor in the Regulation Z definition of open-end credit; and the term consumer, as defined in proposed § 1041.2(a)(4), would be substituted for the term consumer in the Regulation Z definition of open-end credit.

2(a)(15) Outstanding Loan

1. *Payments owed to third parties.* A loan is an outstanding loan if it meets all the criteria set forth in § 1041.2(a)(15), regardless of whether the consumer is required to pay the lender, an affiliate of the lender, or a service provider. A lender selling the loan or the loan servicing rights to a third party does not affect whether a loan is an outstanding loan under § 1041.2(a)(15).

2. *Stale loans.* A loan is generally an outstanding loan if the consumer has a legal obligation to repay the loan, even if the consumer is delinquent or if the consumer is in a repayment plan or workout arrangement. However, a loan that the consumer otherwise has a legal obligation to repay is not an outstanding loan for purposes of part 1041 if the consumer has not made a payment, regardless of whether the payment is a regularly scheduled payment, on the loan within the previous 180-day period. A loan ceases to be an outstanding loan as of the earliest of the date the consumer repays the loan in full, the date the consumer is released from the legal obligation to repay, the date the loan is otherwise legally discharged, or the date that is 180 days following the last payment that the consumer has made on the loan, even if the payment is not a regularly scheduled payment in a scheduled amount. A loan cannot become an outstanding loan due to any events that occur after the consumer repays the loan in full, the consumer is released from the legal obligation to repay, the loan is otherwise legally discharged, or 180 days following the last payment that the consumer has made on the loan.

2(a)(16) Prepayment Penalty

1. *Facts and circumstances.* Whether a charge is a prepayment penalty depends on the circumstances around the assessment of the charge, and specifically whether the charge was assessed in connection with the consumer paying any of the loan before the date on which the loan is due in full. For example, assume a covered longer-term loan is repayable in six monthly installments, but that a consumer pays the entire amount due two months early. If the lender assesses a charge at that point and such charge is not assessed if the consumer makes all six monthly installments, that charge is a prepayment penalty, regardless of how the lender characterizes the charge.

2(a)(17) Service Provider

1. *Credit access businesses and credit services organizations.* Persons who provide a material service to lenders in connection with the lenders' offering or provision of covered loans during the course of obtaining for consumers, or assisting consumers in obtaining, loans from lenders are service providers, subject to the specific limitations in Dodd-Frank Act section 1002(26).

2(a)(18) Total Cost of Credit

2(a)(18)(i) Charges Included in the Total Cost of Credit

1. *Finance charges.* Institutions may rely on 12 CFR 1026.4 and its related commentary in determining whether a charge is a finance charge. Fees paid by consumers to credit access businesses or credit services organizations are typically finance charges under 12 CFR 1026.4(a)(1).

2. *Credit insurance premiums.* The total cost of credit calculation must include any charge that the consumer incurs before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan in connection with credit insurance, including any charges for application, sign-up, or participation in a credit insurance plan, even if those charges are assessed in a single, up-front payment. Charges that the consumer pays in connection with debt cancellation or debt suspension agreements are included in the cost of credit calculation.

3. *Charges for credit-related ancillary products.* The total cost of credit calculation must include any charge that the consumer incurs before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan for any product, service, or membership sold in connection with the credit transaction, including fees paid to unaffiliated third parties. Examples of such credit-related ancillary products include, but are not limited to:

i. Products marketed to protect consumers from identity theft or to alleviate harms caused by identity theft;

ii. Products marketed to alleviate harms caused by the consumer's unemployment;

iii. Products marketed to alleviate harms caused by other hardships that the consumer may suffer, such as credit life, credit disability insurance, or debt suspension products;

iv. Products marketed to alleviate harms resulting from the consumer's wallet or account information being lost or stolen; and

v. Products marketed to keep the consumer informed of information bearing on the consumer's credit record or score.

2(a)(18)(iii)(A) Calculation of the Total Cost of Credit for Closed-End Credit

1. *Similar to Regulation Z.* The total cost of credit must be calculated according to the requirements of Regulation Z, 12 CFR 1026.22, except that the calculation must include the charges set forth in §§ 1041.2(a)(18)(i)(A) through (E). Aside from this distinction, entities may rely on Regulation Z, 12 CFR 1026.22 and its related commentary in calculating the total cost of credit for closed-end credit.

2(a)(18)(iii)(B) Calculation of the Total Cost of Credit for Open-End Credit

1. *Similar to Regulation Z.* The total cost of credit must be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in Regulation Z, 12 CFR 1026.14(c) and (d) (as if a creditor must comply with that section) and must include the charges set forth in § 1041.2(a)(18)(i)(A) through (E), including the amount of charges related to opening, renewing, or continuing an account, to the extent those charges are set forth in § 1041.2(a)(18)(i)(A) through (E). Aside from these distinctions, entities may rely on Regulation Z, 12 CFR 1026.14 and its related commentary in calculating the total cost of credit for open-end credit.

2. *Example.* Assume that a lender offers open-end credit to a consumer primarily for personal, family, or household purposes, and permits the consumer to repay on a monthly basis. At consummation, the consumer borrows the full $500 available under the plan and agrees to repay the loan through recurring electronic fund transfers. The lender charges a periodic rate of 0.006875 (which corresponds to an annual rate of 8.25 percent), plus a fee of $25, charged when the account is established and annually thereafter. Under these circumstances, pursuant to § 1026.14(c)(2) of Regulation Z, the lender would calculate the total cost of credit as follows: "dividing the total finance charge for the billing cycle"—which is $3.44 (corresponding to 0.006875 multiplied by $500), plus $25—"by the amount of the balance to which it is applicable"—$500—"and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year"—12 (since the creditor allows the borrower to repay monthly), which is 68.26 percent. In this example, the line of credit would be a covered loan under proposed § 1041.3(b) because the total cost of credit exceeds a rate of 36 percent per annum and the lender has obtained a leveraged payment mechanism as of consummation.

Section 1041.3—Scope of Coverage; Exclusions

3(b) Covered Loans

1. *In general.* Whether a loan is a covered loan is generally determined based on the loan terms at the time of consummation.

2. *Credit structure.* The term covered loan includes open-end credit and closed-end credit, regardless of the form or structure of the credit.

3. *Primary purpose.* Under § 1041.3(b), a loan is not a covered loan unless it is extended primarily for personal, family, or household purposes. Institutions may rely on 12 CFR 1026.3(a) and its related commentary in determining the primary purpose of a loan.

Paragraph 3(b)(1)

1. *Closed-end credit that does not provide for multiple advances to consumers.* A loan does not provide for multiple advances to a consumer if the loan provides for full disbursement of the loan proceeds only through disbursement on a single specific date.

2. *Loans that provide for multiple advances to consumers.* Both open-end credit and closed-end credit may provide for multiple advances to consumers. Open-end credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. Likewise, closed-end credit may consist of a series of advances. For example:

i. Under a closed-end commitment, the lender might agree to lend a total of $1,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $1,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt.

3. *Facts and circumstances test for determining whether loan is substantially repayable within 45 days.* Substantially repayable means that the substantial majority of the loan or advance is required to be repaid within 45 days of consummation or advance, as the case may be. Application of the standard depends on the specific facts and circumstances of each loan, including the timing and size of the scheduled payments. A loan or advance is not substantially repayable within 45 days of consummation or advance merely because a consumer chooses to repay within 45 days when the loan terms do not require the consumer to do so.

4. *Loans with alternative, ambiguous, or unusual payment schedules.* If a consumer, under any applicable law, would breach the terms of the agreement between the consumer and the lender by not substantially repaying the entire amount of the loan or advance within 45 days of consummation or advance, as the case may be, the loan is a covered short-term loan under § 1041.3(b)(1). For loans or advances that are not required to be repaid within 45 days of consummation or advance, if the consumer, under applicable law, would not breach the terms of the agreement between the consumer and the lender by not substantially repaying the loan or advance in full within 45 days, the loan is a covered longer-term loan under § 1041.3(b)(2) if the loan otherwise met the criteria specified in proposed § 1041.3(b)(2). For loans that are not required to be repaid within 45 days of consummation or advance, if the consumer would breach the agreement between the consumer and the lender by not repaying the loan in either a single payment or a balloon payment, the loan is a covered longer-term balloon-payment loan under § 1041.2(a)(7).

Paragraph 3(b)(2)

1. *Closed-end credit that does not provide for multiple advances to consumers. See* comments 3(b)(1)-1 and 3(b)(1)-2.

2. *Conditions for coverage of a longer-term loan.* A loan that is not required to be substantially repaid within 45 days of consummation or advance is a covered loan only if it satisfies both the total cost of credit requirement of § 1041.3(b)(2)(i) and leveraged payment mechanism or vehicle security requirement of § 1041.3(b)(2)(ii). If the requirements of §§ 1041.3(b)(2)(i) and (ii) are met, and the loan is not otherwise excluded from coverage by proposed § 1041.3(e), the loan is a covered longer-term loan. For example, a 60-day loan is not a covered longer-term loan if the total cost of credit as measured pursuant to § 1041.2(a)(18) is less than or equal to a rate of 36 percent per annum even if the lender or service provider obtains a leveraged payment mechanism or vehicle security.

Paragraph 3(b)(2)(ii)

1. *Timing.* The condition in § 1041.3(b)(2)(ii) is satisfied if a lender or service provider obtains a leveraged payment mechanism or vehicle security before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, regardless of the means by which the lender or service provider obtains a leveraged payment mechanism or vehicle security. If a lender or service provider obtains a leveraged payment mechanism or vehicle security more than 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, the credit is not a covered loan under § 1041.3(b)(2). The loan may nevertheless be a covered loan under § 1041.3(b)(1).

If a loan modification provides for the consumer to receive additional funds, the condition in § 1041.3(b)(2)(ii) is satisfied if a lender or service provider obtains a leveraged payment mechanism or vehicle security before, at the same time as, or within 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan modification. If a lender or service provider has obtained a leveraged payment mechanism on a non-covered loan more than 72 hours after the consumer receives the entire amount of funds that the consumer is entitled to receive under the loan, and a modification of such a non-covered loan provides for the consumer to receive additional funds, the loan modification will result in the non-covered loan becoming a covered loan if the conditions in § 1041.3(b)(2)(ii) are otherwise satisfied. Thus, as of the consummation of such a loan modification, the lender would have to comply with the requirements of part 1041 as they would apply to a new covered loan.

2. *Entirety of funds.* A consumer receives the entire amount of funds that the consumer is entitled to receive under the loan when the consumer has:

i. Received the entire sum available under a closed-end credit agreement and can receive no further funds without consummating another loan; or

ii. Fully drawn down the entire sum available under an open-end credit plan and can receive no further funds without replenishing the credit plan or repaying the balance (if replenishment is allowed under the plan), consummating another loan (if replenishment is not allowed under the plan), or increasing the credit line available under the credit plan.

3. *Leveraged payment mechanism or vehicle security in contract.* The condition in § 1041.3(b)(2)(ii) is satisfied if a loan agreement authorizes the lender to elect to obtain a leveraged payment mechanism or vehicle security, regardless of the time at which the lender actually obtains a leveraged payment mechanism or vehicle security. The following are examples of situations in which a lender obtains a leveraged payment mechanism under § 1041.3(b)(2)(ii):

i. *Future authorization.* A loan agreement provides that the consumer, at some future date more than 72 hours after receiving the loan funds, must authorize the lender or service provider to debit the consumer's account on a recurring basis;

ii. *Delinquency or default provisions.* A loan agreement provides that the consumer must authorize the lender or service provider to debit the consumer's account on a one-time or a recurring basis if the consumer becomes delinquent or defaults on the loan;

iii. *Wage assignments and similar assignment.* A loan agreement provides that, in the event that the consumer becomes delinquent or defaults on the loan, the consumer automatically authorizes the consumer's employer to withhold money from the consumer's paycheck and pay that money to the lender or service provider, or makes a similar assignment of expected future income.

Paragraph 3(c)(1)

1. *Initiating a transfer of money from a consumer's account.* A lender or service provider obtains the ability to initiate a transfer of money when that person can collect payment, or otherwise withdraw funds, from a consumer's account, either on a single occasion or on a recurring basis, without the consumer taking further action. Generally, when a lender or service provider has the ability to "pull" funds or initiate a transfer from the consumer's account, that person has a leveraged payment mechanism. However, a "push" transaction from the consumer to the lender or service provider does not in itself give the lender or service provider a leveraged payment mechanism unless the consumer is contractually obligated to initiate the transaction.

2. *Lender-initiated transfers.* The following are examples of situations in which a lender or service provider has the ability to initiate a transfer of money from a consumer's account:

i. *Check.* A lender or service provider obtains a check, draft, or similar paper instrument written by the consumer.

ii. *Electronic fund transfer authorization.* The consumer authorizes a lender or service provider to initiate an electronic fund transfer from the consumer's account in advance of the transfer, other than an immediate one-time transfer as described in § 1041.3(c)(1) and comment 3(c)(1)-3.

iii. *Remotely created check.* A lender or service provider has authorization to create or present a remotely created check (as defined by Regulation CC, 12 CFR 229.2(fff)), remotely created payment order, or similar instrument drafted on the consumer's account.

iv. *Transfer by account-holding institution.* A lender or service provider that is an account-holding institution has a right to initiate a transfer of funds between the consumer's account and an account of the lender or affiliate, including, but not limited to, an account-holding institution's right of set-off.

3. *One-time transfers.* If the loan or other agreement between the consumer and the lender or service provider does not otherwise provide for the lender or service provider to initiate a transfer without further consumer action, the consumer may authorize a lender or service provider to immediately initiate a one-time transfer without causing the loan to be a covered loan. "Immediately" means that the lender initiates the one-time transfer with as little delay as possible after the consumer authorizes the transfer. For example, a consumer whose loan payment is due can authorize the lender to use an ACH transfer to make the payment. If the lender uses the authorization to initiate the transfer within minutes of the authorization, and does not use the authorization to initiate future transfers, the lender's one-time initiation of an electronic fund transfer does not constitute a leveraged payment mechanism for the purposes of § 1041.3(c)(1).

4. *Transfers not initiated by the lender.* A lender or service provider does not initiate a transfer of money from a consumer's account if the consumer authorizes a third party, such as a bank's automatic bill pay service, to initiate a transfer of money from the consumer's account to a lender or service provider as long as the third party does not transfer the money pursuant to an incentive or instruction from, or duty to, a lender or service provider.

Paragraph 3(c)(3)

1. *Payroll deductions.* A lender obtains a leveraged payment mechanism if, pursuant to a requirement in an agreement between the consumer and the lender or service provider, the consumer directs the consumer's employer or other payor of income to withhold an amount from the consumer's pay or other income or directs a financial institution to receive an amount from an employer or other payor of income that the financial institution would otherwise credit to a consumer's account, which the employer (or other payor of income) or financial institution pays to a lender or service provider in partial or full satisfaction of an amount due under the loan. A lender or service provider obtains a leveraged payment mechanism regardless of whether payroll or other income deductions are recurring or whether deduction of payroll or other income will occur only upon delinquency or default.

3(d) Vehicle Security

Paragraph 3(d)(1)

1. *An interest in a consumer's motor vehicle as a condition of credit.* Subject to the exclusion described in § 1041.3(e)(1), a lender's or service provider's interest in a consumer's motor vehicle constitutes vehicle security only to the extent that the security interest is obtained in connection with the credit. If a party obtains such a security interest in a consumer's motor vehicle for a reason that is unrelated to an extension of credit, the security interest does not constitute vehicle security. For example, if a mechanic performs work on a consumer's motor vehicle and a mechanic's lien attaches to the consumer's motor vehicle by operation of law because the consumer did not timely pay the mechanic's bill, the mechanic does not obtain vehicle security for the purposes of § 1041.3(d)(2).

3(e) Exclusions

3(e)(1) Certain Purchase Money Security Interest Loans

1. *"Sole purpose" test.* The requirements of part 1041 do not apply to loans made solely and expressly to finance the consumer's initial purchase of a good in which the lender takes a security interest as a condition of the credit. For example, the requirements of this part would not apply to a transaction in which a lender makes a loan to a consumer for the express purpose of initially purchasing a motor vehicle, television, household appliance, or furniture in which the lender takes a security interest and the amount financed is approximately equal to, or less than, the cost of acquiring the good, even if the total cost of credit exceeds 36 percent per annum and the lender also obtains a leveraged payment mechanism. If the item that is purchased with the credit is not a good or if the amount financed is greater than the cost of acquiring the good, the credit is not excluded from the requirements of part 1041 under § 1041.3(e)(1). This exclusion does not apply to refinances of credit extended for the purchase of a good.

3(e)(2) Real Estate Secured Credit

1. *Real estate and dwellings.* The requirements of part 1041 do not apply to credit secured by any real property, or by any personal property, such as a mobile home, used or expected to be used as a dwelling if the lender records or otherwise perfects the security interest within the term of the loan, even if the total cost of credit exceeds 36 percent per annum and the lender or servicer provider also obtains a leveraged payment mechanism. If the lender does not record or perfect the security interest during the term of the loan, however, the credit is not excluded from the requirements of part 1041 under § 1041.3(e)(2).

3(e)(5) Non-Recourse Pawn Loans

1. *Lender possession required and no recourse permitted.* A pawn loan must satisfy two conditions to be excluded from the requirements of part 1041 under § 1041.3(e)(5). First, the lender must have sole physical possession and use of the property securing the pawned property at all times during the entire term of the loan. If the consumer retains either possession or use of the property, however limited the consumer's possession or use of the property might be, the loan is not excluded from the requirements of part 1041 under § 1041.3(e)(5). Second, the lender must have no recourse if the consumer does not elect to redeem the pawned item and repay the loan other than retaining the pawned property to dispose of according to State or local law. If any consumer, or if any co-signor, guarantor, or similar person, is personally liable for the difference between the outstanding balance on the loan and the value of the pawned property, the loan is not excluded from the requirements of part 1041 under § 1041.3(e)(5).

3(e)(6) Overdraft Services

1. *Definitions.* Institutions may rely on 12 CFR 1005.17(a) and its related commentary in determining whether credit is an overdraft service or an overdraft line of credit that is excluded from the requirements of part 1041 under § 1041.3(e)(6).

Section 1041.5—Ability-To-Repay Determination Required

5(a) Definitions

5(a)(1) Basic Living Expenses

1. *General.* For purposes of the ability-to-repay determination required under § 1041.5(b), a lender must make a reasonable determination that the consumer's residual income is sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the shorter of the term of the covered short-term loan or the period ending 45 days after consummation. In addition, the lender must determine that the consumer, after making the highest payment under the covered short-term loan, is able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.5(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Examples of goods and services that are necessary for maintaining health and welfare include food and utilities. Examples of goods and services that are necessary for maintaining the ability to produce income include transportation to and from a place of employment and daycare for dependent children. See comment 5(b)-4.

5(a)(2) Major Financial Obligations

1. *General.* Section 1041.5(a)(2) defines major financial obligations as a consumer's housing expense, minimum payments and any delinquent amounts due under debt

obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations. Housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. Minimum payments and any delinquent amounts due under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered and non-covered loan payments, and minimum required credit card payments due during the underwriting period, as well as and any delinquent periodic payments.

5(a)(5) Payment Under the Covered Short-Term Loan.

Paragraphs 5(a)(5)(i) and (ii)

1. *General.* Section 1041.5(a)(5)(i) defines payment under a covered short-term loan as the combined dollar amount payable by the consumer at a particular time following consummation in connection with the loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered loan. Section 1041.5(a)(5)(ii) clarifies that it includes all principal, interest, charges, and fees. A lender may not exclude a portion of the payment simply because a consumer could avoid or delay paying a portion of the payment, such as by requesting forbearance for that portion or by cancelling a service provided in exchange for that portion. For example:

i. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $100 to the lender, which consists of $15 in finance charges, $80 in principal, and a $5 service fee, and the consumer also owes $10 as a credit insurance premium to a separate insurance company. Assume further that under the terms of the loan or other agreements entered into in connection with the loan, the consumer has the right to cancel the credit insurance at any time and avoid paying the $10 credit insurance premium and also has the option to pay the $80 in principal at a later date. The payment under the loan is $110.

ii. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $25 in finance charges to the lender. Under the terms of the loan, the consumer has the option of paying $50 in principal on that date, in which case the lender would charge $20 in finance charges instead. The payment under the loan is $25.

iii. Assume that in connection with a covered short-term loan, a consumer would owe on a particular date $25 in finance charges to the lender and $70 in principal. Under the terms of the loan, the consumer has the option of logging into her account on the lender's Web site and selecting an option to defer the due date of the $70 payment toward principal. The payment under the covered loan is $95.

Paragraph 5(a)(5)(iii)

1. *General.* Section 1041.5(a)(5)(iii) provides assumptions that a lender must make in calculating the payment under § 1041.5(a)(5) for a covered short-term loan with a line of credit (regardless of the extent to which available credit will be replenished as the consumer repays earlier advances). For a line of credit, the amount and timing of the consumer's actual payments after consummation may depend on the consumer's utilization of the credit or on amounts that the consumer has repaid prior to the payments in question. Section 1041.5(a)(5)(iii) requires the lender to calculate the total loan payment assuming that the consumer will utilize the full amount of credit under the loan as soon as the credit is available and that the consumer will make only minimum required payments.

5(b) Reasonable Determination Required

1. *Overview.* Section 1041.5(b) prohibits a lender from making a covered short-term loan (other than a covered short-term loan described in § 1041.7) unless it first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms. Section 1041.5(b) provides minimum standards that the lender's determination must meet to constitute a reasonable determination. The minimum standards provide that the reasonable determination includes three components. Section 1041.5(b)(2)(i) requires that as part of the ability-to-repay determination for any covered short-term loan, a lender must determine that the consumer's residual income projected in accordance with § 1041.5(c) is sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. Section 1041.5(b)(2)(ii) requires that the ability-to-repay determination for a covered short-term loan must also include a determination that the consumer, after making the highest payment under the loan, is able to make payments for major financial obligations, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.5(b)(2)(iii) requires that for a covered short-term loan for which a presumption of unaffordability applies under § 1041.6, the applicable requirements of § 1041.6 are satisfied. Section 1041.5(b)(2) provides that a determination of a consumer's ability to repay is reasonable only if it is based on projections of consumer net income and major financial obligations that comply with § 1041.5(c).

2. *Reasonable determination.* To comply with the requirements of § 1041.5(b), a lender's determination that a consumer will have the ability to repay a covered short-term loan must be reasonable in all respects.

i. To be reasonable, a lender's determination of a consumer's ability to repay a covered short-term loan must:

A. Include the determinations required in § 1041.5(b)(2)(i), (ii), and (iii), as applicable;

B. Be based on reasonable projections of a consumer's net income and major financial obligations in accordance with § 1041.5(c);

C. Be based on reasonable estimates of a consumer's basic living expenses (see comment 5(b)-(4);

D. Be consistent with a lender's written policies and procedures required under § 1041.18 and grounded in reasonable inferences and conclusions as to a consumer's ability to repay a covered short-term loan according to its terms in light of information the lender is required to obtain or consider as part of its determination under § 1041.5(b); and

E. Appropriately account for information known by the lender, whether or not the lender is required to obtain the information under part 1041, that indicates that the consumer may not have the ability to repay a covered short-term loan according to its terms.

ii. A determination of ability to repay is not reasonable if it:

A. Relies on an implicit assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered short-term loan, to make payments under major financial obligations, or to meet basic living expenses.

iii. Evidence of whether a lender's determinations of ability to repay are reasonable may include the extent to which the lender's determinations subject to § 1041.5 result in rates of delinquency, default, and reborrowing for covered short-term loans that are low, equal to, or high, including in comparison to the rates of other lenders making covered short-term loans to similarly situated consumers.

3. *Payments under the covered short-term loan.* Under the ability-to-repay requirements in § 1041.5(b)(2)(i), (ii), and (iii), a lender must determine the amount and timing of the payments due in connection with the covered short-term loan. The lender is responsible for calculating, for purposes of the determination and as of consummation, the timing and amount for all payments under the loan based on the terms of the loan. See § 1041.5(a)(5) for the definition of payment under a covered short-term loan, including assumptions that the lender must make in calculating the amount and timing of payments under a loan that is a line of credit.

4. *Basic living expenses.* To comply with § 1041.5(b), a lender must account for a consumer's need to meet basic living expenses for the applicable period. Section 1041.5(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Sections 1041.5(a)(1) and (b) do not specify a particular method that a lender must use to determine an amount of funds that a consumer requires to meet basic living expenses for an applicable period. For example, a lender is not required to itemize the basic living expenses of each consumer. Nor is a lender required to assume that a consumer's basic living expenses during the term of a prospective covered loan must be

equal to the consumer's expenditures for goods and services other than major financial obligations during a recent period preceding consummation of the prospective loan. Whether a particular method complies with the requirements of § 1041.5(b) depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

i. Reasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Setting minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer's income, location, and household size;

B. Obtaining additional reliable information about a consumer's expenses other than the information required to be obtained under § 1041.5(c), to develop a reasonably accurate estimate of a consumer's basic living expenses; or

C. Any method that reliably predicts basic living expenses.

ii. Unreasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Assuming that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer's net income that is not required for payments for major financial obligations is available for loan payments; or

B. Setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered short-term loans, have yielded high rates of default and reborrowing relative to rates of default and reborrowing of other lenders making covered loans to similarly situated consumers.

5(b)(2)(i)

1. *Applicable period for residual income.* Section 1041.5(b)(2)(i) requires the lender to make a reasonable determination that the consumer's residual income will be sufficient for the consumer to make all payments under the covered short-term loan and to meet basic living expenses during the term of the loan. A lender complies with the requirement in § 1041.5(b)(2)(i) if it reasonably determines that the consumer's projected residual income during the shorter of the term of the loan or the period ending 45 days after consummation of the loan will be greater than the sum of all payments under the loan plus an amount the lender reasonably estimates will be needed for basic living expenses during the term of the loan. For example:

A. Assume a lender considers making a covered loan to a consumer on March 1. The prospective loan would be repayable in a single payment of $385 on March 17. The lender determines that, based on its projections of net income that the consumer will receive and payments for major financial obligations that will fall due from March 1 through March 17, the consumer will have $800 in residual income. The lender complies with the requirement in § 1041.5(b)(1) if it reasonably determines that $800 will be greater than the sum of the $385 loan payment plus an amount the lender reasonably estimates will be needed for basic living expenses from March 1 through March 17. (Note that in this example the lender also would have to comply with the requirement of § 1041.5(b)(2)(ii). See comment 5(b)(2)(ii)-1.)

2. *Sufficiency of residual income.* For any covered short-term loan, the lender must make a reasonable determination that the consumer's residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the shorter of the term of the loan or for 45 days after consummation of the loan. For a covered short-term loan, residual income is sufficient if it is greater than the sum of payments that would be due under the loan plus an amount the lender reasonably estimates will be needed for basic living expenses. (See comment 5(b)(2)(i)-1 for applicable periods for the determination.)

Paragraph 5(b)(2)(ii)

1. *General.* Section 1041.5(b)(2)(ii) requires that for a covered short-term loan, the lender must make a reasonable determination that the consumer, after making the highest loan payment that will be due under the loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan as they fall due, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. (This determination is in addition to the required determination regarding residual income under § 1041.5(b)(2)(i).) Section 1041.5(b) provides that a determination of a consumer's ability to repay is reasonable only if it is based on projections of consumer net income and payments for major financial obligations determined in accordance with § 1041.5(c). Accordingly, a lender must include in its determination under § 1041.5(b)(2)(ii) the amount and timing of payments for major financial obligations that it projects the consumer must make during the 30-day period following the highest loan payment, in accordance with § 1041.5(c). A lender must include in its determination under § 1041.5(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with § 1041.5(c). For a loan with two or more payments that are equal to each other in amount and higher than all other payments, a lender complies by making the required determination for the 30-day period following the later in time of the two or more higher payments. See comment 5(b)-4, regarding methods for estimating amounts for basic living expenses. For example:

i. Assume that a lender considers making a covered loan to a consumer on April 23 and that the loan would be repayable in a single payment of $550 (*i.e.*, that payment is also the highest loan payment) on April 29. Assume further that the lender reasonably determines in accordance with § 1041.5(b)(2)(i) that the consumer's residual income for the period from April 23 through April 29 will be sufficiently greater than the sum of the $550 loan payment plus an adequate amount for basic living expenses for the same period. Assume further that payment of the $550 loan payment, however, will consume all but $1,000 of the consumer's last paycheck preceding or coinciding with the date of the loan payment. The lender projects that the consumer's next receipt of income will not occur until May 13, and the consumer must make a rent payment of $950 on May 1 and a student loan payment of $200 on May 5. The consumer, having made the $550 covered loan payment, would not be able make payments under two major financial obligations (*i.e.*, rent payment and the student loan payment), that fall due before May 30. Accordingly, the lender cannot reasonably determine that the consumer has the ability to repay the loan under § 1041.5(b)(2)(ii).

5(c) Projecting Consumer Net Income and Payments for Major Financial Obligations

Paragraph 5(c)(1)

1. *General.* Section 1041.5(c)(1) provides that to be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on amounts and timing stated by the consumer under § 1041.5(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with § 1041.5(c)(3)(ii). It further provides that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. For example:

A. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The deposit account transaction records the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) show that the consumer receives $900 every two weeks. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

B. Assume that a consumer states that her net income is $900 every two weeks, pursuant to § 1041.5(c)(3)(i). For verification evidence, the lender uses an online income verification service that verifies gross income based on employer-reported payroll information, pursuant to § 1041.5(c)(3)(ii)(A) and comment 5(c)(3)(ii)(A)-1. The verification evidence the lender obtains pursuant to § 1041.5(c)(3)(ii) shows that the consumer receives $1,200 every two weeks. The lender reasonably determines that for a typical consumer, gross income of $1,200 is consistent with net income of $900. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

C. Assume that a consumer states that her minimum required credit card payment is $150 on the fifth day of each month, pursuant to § 1041.5(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) shows that the consumer's minimum monthly payment is $160. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $160 credit card payment on the fifth day of each month because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

D. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing biweekly direct deposits of $750, $850, and $995, respectively, during the preceding six-week period. The lender does not comply with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $1,000 in net income every two weeks.

E. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing biweekly direct deposits of $1,000, $1,000, and $800, respectively, during the preceding six-week period. The consumer explains that the most recent income was lower than her usual income because she missed two days of work due to illness. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $1,000 in income every two weeks because it reasonably considers the consumer's explanation in determining whether the stated amount and timing is consistent with the verification evidence.

F. Assume that a consumer states that her net income is $2,000 every two weeks, pursuant to § 1041.5(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.5(c)(3)(ii) showing no income transactions in the preceding month but showing consistent biweekly direct deposits of $2,000 from ABC Manufacturing prior to that month. The consumer explains that she was temporarily laid off for one month while ABC Manufacturing retooled the plant where she works but that she recently resumed work there. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of $2,000 in income every two weeks because it reasonably considers the consumer's explanation in determining whether the stated amount and timing is consistent with the verification evidence.

G. Assume that a consumer states that she owes a child support payment of $200 on the first day of each month, pursuant to § 1041.5(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.5(c)(3)(ii) does not include any child support payment. The lender complies with § 1041.5(c)(1) if it makes the determination required under § 1041.5(b) based on a projection of a $200 child support payment on the first day of each month because it relies on the stated amount and timing and nothing in the verification evidence is inconsistent with the stated amount and timing.

5(c)(3) Evidence of Net Income and Payments for Major Financial Obligations

Paragraph 5(c)(3)(i)

1. *Consumer statements.* Section 1041.5(c)(3)(i) requires a lender to obtain a consumer's written statement of the amounts and timing of consumer's net income receipts and payments for categories (*e.g.*, credit card payments, automobile loan payments, housing expense payments, child support payments, etc.) of the consumer's major financial obligations. A consumer's written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. A lender complies with a requirement to obtain the consumer's statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under § 1041.5(b)(2). For example, a lender's receipt of a consumer's statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer's rent payments are due.

Paragraph 5(c)(3)(ii)

1. *Verification requirement.* Section 1041.5(c)(3)(ii) establishes requirements for a lender to obtain verification evidence for the amounts and timing of a consumer's net income and required payments for major financial obligations.

Paragraph 5(c)(3)(ii)(A)

1. *Income.* Section 1041.5(c)(3)(ii)(A) requires a lender to obtain a reliable record (or records) of income payment (or payments) covering sufficient history to reasonably support the lender's projection under § 1041.5(c)(1). For purposes of verifying net income, a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. A reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account) or money services business check-cashing transactions showing the amount and date of a consumer's receipt of income.

Paragraph 5(c)(3)(ii)(B)

1. *Payments under debt obligations.* To verify a consumer's required payments under debt obligations, § 1041.5(c)(3)(ii)(B) requires a lender to obtain a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2), if available. A lender satisfies its obligation under § 1041.6(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.5(c)(3)(ii)(B) to obtain this same consumer report. The amount and timing of a payment required under a debt obligation or the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule.

Paragraph 5(c)(3)(ii)(D)

1. *Housing expense.* Section 1041.5(c)(3)(ii)(D) requires a lender to obtain verification evidence for the consumer's housing expense. It provides three methods for complying with this obligation.

i. For a housing expense under a debt obligation (*i.e.*, a mortgage), § 1041.5(c)(3)(ii)(D) provides that a lender may satisfy the requirement by obtaining a national consumer report that includes the housing expense under a debt obligation pursuant to § 1041.5(c)(3)(ii)(B).

ii. Under § 1041.5(c)(1)(ii)(D)(*1*), a lender may satisfy the obligation to obtain verification evidence of housing expense by obtaining a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. For purposes of this alternative, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer.

iii. Under § 1041.5(c)(1)(ii)(D)(*2*), a lender may satisfy its obligation to obtain verification evidence of housing expense using an amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer. The lender may estimate a consumer's share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. For example, a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (*e.g.*, in the same census tract) where the consumer resides. Alternatively, a lender may estimate individual or household housing expense based on housing expense and other data reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers' shares of housing expense. A lender may estimate a consumer's share of household housing expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

Section 1041.6—Additional Limitations on Lending—Covered Short-Term Loans

6(a) Additional Limitations on Making a Covered Short-Term Loan Under § 1041.5

6(a)(1) General

1. *General.* Section 1041.6 specifies circumstances in which a consumer is presumed to not have the ability to repay a covered short-term loan under § 1041.5 and circumstances in which making a new covered short-term loan under § 1041.5 is prohibited during a mandatory cooling-off period. The presumptions and prohibitions apply to making a covered short-term loan under § 1041.5.

2. *Application to rollovers.* The presumptions and prohibitions in § 1041.6 apply to new covered short-term loans under § 1041.5, as well as to loans that are a rollover of a prior loan (or what is termed a "renewal" in some States). In the event that a lender is permitted under State law to roll over a loan, the rollover would be treated as a new covered short-term loan subject to the presumptions and prohibitions in § 1041.6. For example, assume a lender is permitted under applicable State law to roll over a covered short-term loan; the lender makes a covered short-term loan with $500 in principal and a 14-day contractual duration; the consumer returns to the lender on day 14 and is offered the opportunity to roll over the first loan for an additional 14 days for a $75 fee. The rollover would be the second loan in a loan sequence, as defined under § 1041.2(a)(12), because fewer than 30 days would have elapsed between consummation of the new covered short-term loan (the rollover) and the consumer having had a covered short-term loan made under § 1041.5 outstanding. Therefore, the rollover would be subject to the presumption of unaffordability in § 1041.6(b).

3. *Relationship to § 1041.5.* A lender's determination that a consumer will have the ability to repay a covered short-term loan is not reasonable within the meaning of § 1041.5 if under § 1041.6(b), (c), or (d) the consumer is presumed to not have the ability to repay the loan and the lender is not able to overcome the presumption in the manner set forth in § 1041.6(e).

6(a)(2) Borrowing History Review

1. *Relationship to § 1041.5(c)(3)(ii)(B).* A lender satisfies its obligation under § 1041.6(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.5(c)(3)(ii)(B) to obtain this same consumer report.

2. *Availability of information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2).* If no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are available at the time that the lender is required to obtain the information about the consumer's borrowing history, the lender is nonetheless required to obtain information about the consumer's borrowing history from the records of the lender and its affiliates. A lender may be unable to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) if, for example, all registered information systems are temporarily unavailable.

6(b) Presumption of Unaffordability for Sequence of Covered Short-Term Loans Made Under § 1041.5

6(b)(1) Presumption

1. *General.* Section 1041.6(b)(1) means that a lender cannot make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered short-term loan made under § 1041.5 outstanding and for 30 days thereafter unless either the exception to the presumption in § 1041.6(b)(2) applies or the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer's financial capacity such that the consumer would have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. If the loan is the fourth loan in a sequence of covered short-term loans, however, the loan is subject to the prohibition under § 1041.6(f). *See* § 1041.6(f) and accompanying commentary.

6(b)(2) Exception

1. *Exception to the presumption.* Section 1041.6(b)(2) provides a limited exception to the presumption in § 1041.6(b)(1) in certain circumstances. Under § 1041.6(b)(2), the presumption of unaffordability does not apply if the circumstances in either § 1041.6(b)(2)(i)(A) or (B) are present and the condition in § 1041.6(b)(2)(ii) is satisfied.

Paragraph 6(b)(2)(i)(A)

1. *General.* The exception in § 1041.6(b)(2)(i)(A) to the presumption in § 1041.6(b)(1) applies if the consumer has: (1) Paid in full the prior covered short-term loan; and (2) would not owe more than 50 percent of the amount paid on the prior loan in connection with the new covered short-term loan. The prior covered short-term loan is paid in full if the consumer has satisfied all payment obligations on the loan, including repayment of the amount financed and all charges included in the total cost of credit, as well as any other fees and charges that are excluded from the total cost of credit (*e.g.,* late fees). *See* § 1041.2(a)(18) for the definition of total cost of credit. The loan is considered paid in full for purposes of § 1041.6(b)(2)(i)(A) whether or not the consumer's obligations were satisfied timely under the loan contract. For the exception under § 1041.6(b)(2)(i)(A) to apply, furthermore, the consumer would not owe, in connection with the new covered short-term loan, more than 50 percent of the amount that the consumer paid on the prior covered short-term loan. The amounts paid and amounts owed include the amount financed and charges included in the total cost of credit, but exclude any charges excluded from the total cost of credit. This means, for example, that payment of late fees is required for the loan to be "paid in full," but the amount of the late fees is not included toward calculating whether the consumer would owe, in connection with the new loan, more than 50 percent of the amount the consumer paid on the prior loan.

2. *Example.* Assume a consumer receives a $400 loan with $100 in finance charges and a 14-day contractual duration, pays the $500 principal and finance charges on the contractual due date, and then returns 20 days later to borrow a $160 loan with $40 in finance charges and a 14-day contractual duration. The presumption of unaffordability under § 1041.6(b) does not apply because the prior covered short-term loan was paid in full and the $200 that would be owed on the second loan is less than 50 percent of the $500 paid on the first loan. In contrast, in the example above, such presumption of unaffordability applies if the consumer returned to borrow a $320 loan with an $80 finance charge and a 14-day contractual duration because $400 is more than 50 percent of the $500 paid on the first loan.

Paragraph 6(b)(2)(i)(B)

1. *General.* If a lender is permitted under applicable State law to roll over a covered short-term loan (or what is termed a renewal in some States), the exception to the presumption of unaffordability under § 1041.6(b)(2) applies to a rollover of a prior covered short-term loan in which the consumer provides partial repayment of the prior loan. For purposes of the presumptions and prohibitions under § 1041.6, a rollover of a covered short-term loan is considered a new covered short-term loan (*see also* comment 6(a)(1)-(2). Thus, the reference in § 1041.6(b)(2)(i)(B) to the prior covered short-term loan is to the outstanding loan that is being rolled over and the reference to the new covered short-term loan is to the rollover. For the conditions of § 1041.6(b)(2)(i)(B) to be satisfied, the consumer would not owe more on the new covered short-term loan (*i.e.,* the rollover) than the consumer paid in connection with the prior covered short-term loan (*i.e.,* the outstanding loan being rolled over). This means that the consumer will repay at least 50 percent of the amount owed on the loan being rolled over, including the amount financed and charges included in the total cost of credit but excluding any fees that are excluded from the total cost of credit (*e.g.,* late fees).

2. Example. Assume a lender makes a covered short-term loan for $400 with a 14-day contractual duration (Loan A) to a consumer and the lender is permitted by applicable State law to roll over covered short-term loans. The consumer returns on day 14 with $250 in cash and seeks to roll over the remaining $150 due on Loan A into a second covered short-term loan with a 14-day duration (Loan B). Assume that the principal for Loan B would be $150 and the rollover fee would be $30, so that the consumer would owe $180 on Loan B. The exception in § 1041.6(b)(2)(ii) would apply because the consumer would not owe more on the new loan ($180) than the consumer paid on the prior loan ($250).

6(c) Presumption of Unaffordability for a Covered Short-Term Loan Following a Covered Longer-Term Balloon-Payment Loan Made Under § 1041.9

1. *General.* Section 1041.6(c) means that a lender cannot make a covered short-term loan under § 1041.5 during the time period in which the consumer has a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter unless the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer's financial capacity such that the consumer would have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

6(d) Presumption of Unaffordability for a Covered Short-Term Loan During an Unaffordable Outstanding Loan

1. *General.* Section 1041.6(d) provides that, except for loans subject to the presumptions or prohibitions under § 1041.6(b), (c), (f), or (g), a consumer is presumed not to have the ability to repay a covered short-term loan under § 1041.5 if, at the time of the lender's determination under § 1041.5, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the conditions in § 1041.6(d)(1) through (4) is present. Section 1041.6(d) means that a lender cannot make a covered short-term loan under § 1041.5 if any of the conditions in § 1041.6(d)(1) through (4) is present unless the lender determines in the manner set forth in § 1041.6(e) that there is sufficient improvement in the consumer's financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

2. *Applicability.* Section 1041.6(d) applies any time a consumer has a loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the other conditions are present except if a presumption or prohibition under § 1041.6(b), (c), (f), or (g) would otherwise apply. For example, if a consumer has outstanding with the same lender a non-covered installment loan with scheduled biweekly payments of $100 and the lender is determining whether the consumer will have the ability to repay a new covered short-term loan that would have a payment of $200, § 1041.6(d) would apply if the consumer has, within the prior 30 days, expressed an inability to make a payment on the outstanding loan as provided for in § 1041.6(d)(2). If a consumer instead has a non-covered installment loan outstanding with a different and unaffiliated lender, § 1041.6(d) does not apply.

3. *Indicia of distress.* Section 1041.6(d) applies only if at least one of the four circumstances in § 1041.6(d)(1) through (4) is present at the time that the lender is making the determination of ability to repay for the new covered short-term loan made under § 1041.5.

Paragraph 6(d)(1)

1. *Significant delinquency.* Under § 1041.6(d)(1), a delinquency is relevant to the presumption if the consumer is more than seven days delinquent at the time that the lender is making the determination under § 1041.5 for the new covered short-term loan or has been more than seven days delinquent at any point in the 30 days prior to the ability-to-repay determination. Delinquencies that have been cured and are older than 30 days do not cause the application of the presumption in § 1041.6(d). For example, if a consumer has a non-covered installment loan outstanding with the lender, was 10 days delinquent on a payment three months prior, and is current on payments at the time of the ability-to-repay determination for the new covered short-term loan, the prior delinquency would not cause the application of the presumption of unaffordability.

Paragraph 6(d)(2)

1. *Expression of inability to make one or more payments.* Under § 1041.6(d)(2), a consumer's expression of inability to make one or more payments on the outstanding loan causes the application of the presumption in § 1041.6(d) only if such an expression was made within the 30 days prior to the ability-to-repay determination under § 1041.5 for the new covered short-term loan. Consumers may express inability to make a payment on the outstanding loan in a number of ways. For example, a consumer may make a statement to the lender or its affiliate that the consumer is unable to or needs help to make a payment or a consumer may request or accept an offer of additional time to make a payment.

Paragraph 6(d)(3)

1. *Skipped payment.* Under § 1041.6(d)(3), the presumption in § 1041.6(d) applies if the period of time between consummation of the new covered short-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered short-term loan and the next regularly scheduled payment on the outstanding loan. Such a transaction would have the effect of permitting the consumer to skip a payment that would otherwise have been due on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender and the loan has a regularly scheduled payment due on March 1 and another due on April 1, the circumstance in § 1041.6(d)(3) would be present if the new covered short-term loan would be consummated on February 28 and would not require payment until April 1.

Paragraph 6(d)(4)

1. *Cash to cover payments on existing loan.* Under § 1041.6(d)(4), the presumption in § 1041.6(d) applies if the new covered short-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that is not substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered short-term loan. For example, assume a consumer has a non-covered installment loan outstanding that is being serviced by the same lender, the loan has regularly scheduled payments of $100 due every two weeks, and the new covered short-term loan would result in the consumer receiving a disbursement of $200. Since $200 in payments on the outstanding loan would be due within 30 days of consummation, the circumstance in § 1041.6(d)(4) would be present and under § 1041.6(d) the consumer would be presumed to not have the ability to repay the new covered short-term loan. In contrast, if, in the same scenario, the new covered short-term loan would result in the consumer receiving a disbursement of $1,000, then the disbursement of loan proceeds would be substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered short-term loan and the circumstance in § 1041.6(d)(4) would not be present.

6(e) Overcoming the Presumption of Unaffordability

1. *General.* When a consumer seeks to roll over a covered short-term loan or to borrow another covered short-term loan during the term of or within a short period after repaying a prior loan, § 1041.6(b) through (d) create a presumption that the consumer would not be able to afford a new covered short-term loan. Section 1041.6(e) permits the lender to overcome the presumption in limited circumstances evidencing a projected improvement in the consumer's financial capacity for the new loan relative to the prior loan or, in some circumstances, during the prior 30 days. See comments 6(e)-2 and -3 for examples of such circumstances. To overcome the presumption of unaffordability, § 1041.6(e) requires a lender to reasonably determine, based on reliable evidence, that that the consumer will have sufficient improvement in financial capacity such that the new loan would not exceed the consumer's ability to repay despite the unaffordability of the prior loan. Section 1041.6(e) requires lenders to assess a sufficient improvement in financial capacity by comparing the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.5(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

2. *Example.* Under § 1041.6(e), a lender may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the need to reborrow is prompted by a decline in income since obtaining the prior loan (or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination) that is not reasonably expected to recur for the period during which the lender is required to make an ability-to-repay determination for the new covered short-term loan. For instance, assume a consumer obtained a covered short-term loan for $500 with a 14-day contractual duration, repaid that loan in full when due, and then

21 days later sought to take out a new covered short-term loan for $500 with a 14-day contractual duration. The presumption of unaffordability in § 1041.6(b) applies to the new covered short-term loan. However, suppose that the consumer presents evidence showing that the consumer normally works 40 hours per week but was unable to work during the first week after repaying the prior covered short-term loan, and thus earned half of the consumer's usual pay during that pay period. If the lender reasonably determines that the consumer's residual income projected under § 1041.5(b)(2)(i) for the new covered short-term loan will return to normal levels and would be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.6(b) has been overcome.

3. *Example.* Under § 1041.6(e), a lender also may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the consumer's financial capacity will be sufficiently improved since obtaining the prior loan (or if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination) because of a projected increase in net income or a decrease in major financial obligations for the period during which the lender is required to make an ability-to-repay determination for the new covered short-term loan. For instance, assume a consumer obtains a $300 covered short-term loan with a 30-day contractual duration. When the loan comes due, the consumer seeks a new $200 covered short-term loan with a 30-day contractual duration. The presumption of unaffordability in § 1041.6(b) applies to the new covered short-term loan. However, suppose that the consumer presents reliable evidence indicating that during the prior 30 days the consumer moved to a new apartment and reduced housing expenses by more than $100. If the lender reasonably determines that the amount of the consumer's residual income projected under § 1041.5(b)(2)(i) for the new covered short-term loan will exceed the amount of the consumer's residual income previously projected under § 1041.5(b)(2)(i) for the prior loan by an amount that will be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.6(b) has been overcome.

4. *Reliable evidence for the determination under § 1041.6(e).* In order to make a reasonable determination under § 1041.6(e) of whether the consumer's financial capacity has sufficiently improved since the prior loan (or if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination) such that the new loan would not exceed the consumer's ability to repay the new loan according to its terms despite the unaffordability of the prior loan, the lender must use reliable evidence. Reliable evidence consists of verification evidence regarding the consumer's net income and major financial obligations sufficient to make the comparison required under § 1041.6(e). For example, bank statements indicating direct deposit of net income from the consumer's employer during the periods of time for which the consumer's residual income must be compared to determine whether sufficient improvement in the consumer's financial capacity has taken place would constitute reliable evidence. In contrast, a self-certification by the consumer that his or her financial capacity has sufficiently improved since obtaining the prior loan or, if the prior loan was not a covered short-term loan or covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination would not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

6(f) Prohibition on Loan Sequences of More Than Three Covered Short-Term Loans Made Under § 1041.5.

1. *Prohibition.* Section 1041.6(f) prohibits a lender from making a fourth covered short-term loan under § 1041.5 in a loan sequence of covered short-term loans made under § 1041.5. Nothing in § 1041.6(f) limits a lender's ability to make a covered longer-term loan under § 1041.9, § 1041.11, or § 1041.12. *See* § 1041.2(a)(12) for the definition of a loan sequence.

6(h) Determining Period Between Consecutive Covered Loans

1. *General.* Section 1041.6(h) specifies the manner in which the time periods specified in § 1041.6(b), (c), (f), and (g) must be determined. Under § 1041.6(h), during the time period in which any covered short-term loan made by a lender or its affiliate under § 1041.5, any covered short-term loan made by a lender or its affiliate under § 1041.7, or any covered longer-term balloon-payment loan made by the lender or its affiliate under § 1041.9 is outstanding, and for 30 days thereafter, if the lender or its affiliate makes a non-covered bridge loan, then the days during which the non-covered bridge loan is outstanding do not count toward the determination of the applicable time periods. *See* § 1041.2(a)(13) for the definition of non-covered bridge loan.

2. *Example.* For example, assume that a lender makes a covered short-term loan under § 1041.5 with a contractual duration of 14 days (Loan X), the loan is the first loan in a sequence, and the consumer repays Loan X on the contractual due date. Assume that 10 days later the lender then makes to the consumer a non-recourse pawn loan (Loan Y), which under § 1041.2(a)(13) is a non-covered bridge loan, that Loan Y has a contractual duration of 60 days, and that the consumer repays Loan Y on the contractual due date. Assume that the consumer returns to the lender 10 days after repayment of Loan Y seeking another covered short-term loan (Loan Z). The consummation of Loan Z would be 80 calendar days after the date on which Loan X was repaid. Because greater than 30 calendar days had elapsed since Loan X was repaid, the lender generally would not need to consider Loan X as the prior covered short-term loan when determining whether Loan Z is permissible under § 1041.6(b). However, because Loan Y was a non-covered bridge loan, the 60 days during which Loan Y was outstanding are not counted toward the determination of whether 30 days has elapsed since the prior covered short-term loan was outstanding. Not including the 60 days during which Loan Y was outstanding, only 20 days had elapsed between the date on which the consumer repaid Loan X and the consummation date for Loan Z. Therefore, the consummation of Loan Z is deemed to be within 30 days of Loan X being outstanding. As a result, under § 1041.6(b), there would be a presumption of unaffordability for Loan Z.

Section 1041.7 Conditional Exemption for Certain Covered Short-Term Loans

7(a) Conditional Exemption for Certain Covered Short-Term Loans

1. *General.* Under § 1041.7(a), a lender that complies with § 1041.7(b) through (e) can make a covered short-term loan, without complying with the otherwise applicable requirements under §§ 1041.5 and 1041.6. Section 1041.7(a) provides an exemption to the requirements of §§ 1041.5 and 1041.6 only; nothing in § 1041.7 provides lenders with an exemption to the requirements of other applicable laws, including State laws.

2. *Obtaining consumer borrowing history information.* Under § 1041.7(a), the lender must determine prior to making a covered short-term loan under § 1041.7 that certain requirements are satisfied. In particular, § 1041.7(b), (c), and (d) would require the lender to obtain information about the consumer's borrowing history from the records of the lender and the records of the lender's affiliates. Furthermore, § 1041.7(b) and (c) require the lender to obtain a consumer report from an information system registered under § 1041.17(c)(2) or (d)(2). If no information systems are registered under § 1041.17(c)(2) or (d)(2) and available as of the time the lender is required to obtain the report, the lender cannot comply with the requirements in § 1041.7(b) and (c). A lender may be unable to obtain a consumer report if, for example, information systems have been registered under § 1041.17(c)(2) or (d)(2) but all registered information systems are temporarily unavailable. Under these circumstances, a lender cannot make a covered short-term loan under § 1041.7.

7(b) Loan Term Requirements

Paragraph 7(b)(1)

1. *Loan sequence.* Section 1041.2(a)(11) defines a loan sequence. For further clarification and examples regarding the definition of loan sequence, see § 1041.2(a)(11).

2. *Principal amount limitations—general.* For a covered short-term loan made under § 1041.7, different principal amount limitations apply under § 1041.7(b)(1) depending on whether the loan is the first, second, or third loan in a loan sequence. The principal amount limitations apply regardless of whether any or all of the loans are made by the same lender, an affiliate, or unaffiliated lenders. Under § 1041.7(b)(1)(i), for the first loan in a loan sequence, the

principal amount must be no greater than $500. Under § 1041.7(b)(1)(ii), for the second loan in a loan sequence, the principal amount must be no greater than two-thirds of the principal amount of the first loan in the loan sequence. Under § 1041.7(b)(1)(iii), for the third loan in a loan sequence, the principal amount must be no greater than one-third of the principal amount of the first loan in the loan sequence.

3. *Application to rollovers.* The principal amount limitations under § 1041.7 apply to rollovers of the first or second loan in a loan sequence as well as new loans that are counted as part of the same loan sequence. Rollovers are defined as a matter of State law but typically involve deferral of repayment of the principal amount of a covered short-term loan for a period of time in exchange for a fee. In the event the lender is permitted under State law to make rollovers, the lender may, in a manner otherwise consistent with applicable State law, roll over a covered short-term loan made under § 1041.7, but the rollover would be treated as the second loan or third loan in the loan sequence, as applicable, and would therefore be subject to the principal amount limitations set forth in § 1041.7(b)(1). For example, assume a lender is permitted under applicable State law to make a rollover. If the consumer is made a first loan in a loan sequence under § 1041.7 with a $300 principal amount, under § 1041.7(b)(1)(ii), the lender may allow the consumer to roll over that loan so long as the consumer repays at least $100, so that the principal of the rolled over loan would be no greater than $200. Similarly, under § 1041.7(b)(1)(iii), the lender may allow the consumer to roll over the second loan in the loan sequence as permitted by State law, so long as the consumer repays at least an additional $100, so that the principal of the rolled over loan would be no greater than $100.

4. *Example.* Assume that a consumer who otherwise complies with the requirements of § 1041.7 seeks a covered short-term loan and that the lender chooses to make the loan without assessing the consumer's ability to repay. Under § 1041.7(b)(1)(i), the principal amount of the loan must not exceed $500. Assume that the consumer is made a covered short-term loan under § 1041.7 with a principal amount of $450, the loan is contractually due in 14 days, and the consumer repays the loan on the contractual due date. Assume that the consumer returns to the lender 10 days after the repayment of the first loan to take out a second covered short-term loan under § 1041.7. Under § 1041.7(b)(1)(ii), the principal amount of the second loan may not exceed $300. Assume, further, that the consumer is then made a covered short-term loan under § 1041.7 with a principal amount of $300, the loan is contractually due in 14 days, and the consumer repays the loan on the contractual due date. If the consumer returns to the lender 25 days after the repayment of the second loan to take out a third covered short-term loan under § 1041.7, under § 1041.7(b)(1)(iii), the principal amount of the third loan may not exceed $150. These same limitations would apply if the consumer went to a different, unaffiliated lender for the second or third loan. If, however, the consumer does not return to the lender until 32 days after the date on which the second loan in the loan sequence was repaid, the subsequent loan would not be part of the prior loan sequence and instead would be the first loan in a new loan sequence. Therefore, that loan would be subject to the $500 principal amount limitation under § 1041.7(b)(1)(i).

Paragraph 7(b)(2)

1. *Equal payments and amortization for loans with multiple payments.* Section 1041.7(b)(2) provides that for a loan with multiple payments, the loan must amortize completely during the term of the loan and the payment schedule must allocate a consumer's payments to the outstanding principal and interest and fees as they accrue only by applying a fixed periodic rate of interest to the outstanding balance of the unpaid loan principal during every repayment period for the term of the loan. For example, if the loan has a contractual duration of 30 days with two scheduled biweekly payments, under § 1041.7(b)(2) the lender cannot require the consumer to pay interest only for the first scheduled biweekly payment and the remaining principal balance at the second scheduled biweekly payment. Rather, the two scheduled payments must be equal in amount and amortize over the course of the loan term in the manner required under § 1041.7(b)(2).

Paragraph 7(b)(3)

1. *Inapplicability of conditional exemption to a loan with vehicle security.* Section 1041.7(b)(3) prohibits a lender from making a covered-short-term loan under § 1041.7 with vehicle security. If a covered short-term loan has vehicle security, the lender must comply with all of the requirements under §§ 1041.5 and 1041.6, including the ability-to-repay determination.

Paragraph 7(b)(4)

1. *Inapplicability of conditional exemption to an open-end loan.* Section 1041.7(b)(4) prohibits a lender from making a covered short-term loan under § 1041.7 structured as an open-end loan under § 1041.7. If a covered short-term loan is structured as an open-end loan, the lender must comply with all of the requirements under §§ 1041.5 and 1041.6, including the ability-to-repay determination.

7(c) Borrowing History Requirements

Paragraph 7(c)(1)

1. *Outstanding loan.* Section 1041.7(c)(1) provides that a lender cannot make a covered short-term loan under the requirements of § 1041.7 if the consumer has a covered loan outstanding made under § 1041.5, § 1041.7, or § 1041.9 with any lender, not including a loan made by the same lender or an affiliate under § 1041.7 that the lender is rolling over. This requirement does not apply to covered longer-term loans made under §§ 1041.11 and 1041.12. Outstanding loan is defined in § 1041.2(a)(15); see § 1041.2(a)(15) and accompanying commentary for further clarification on the definition.

2. *Application to rollovers.* For purposes of the borrowing history requirement under § 1041.7(c)(1), an outstanding loan does not include a loan made by the same lender or an affiliate under § 1041.7 that the lender is rolling over. For further clarification on how the requirements under § 1041.7 apply to rollovers, see comment 7(b)(1)-3.

Paragraph 7(c)(2)

1. *Preceding loans.* Section 1041.7(c)(2) provides that prior to making a covered short-term loan under § 1041.7, the lender must determine that more than 30 days has elapsed since the consumer had an outstanding loan that was either a covered short-term loan (as defined in § 1041.2(a)(6)) made under § 1041.5 or a covered longer-term balloon-payment loan (as defined in § 1041.2(a)(7)) made under § 1041.9. This requirement applies regardless of whether this prior loan was made by the same lender, an affiliate, or an unaffiliated lender. For example, assume a lender makes a covered short-term loan to a consumer under § 1041.5, the loan has a contractual duration of 14 days, and the consumer repays the loan on the contractual due date. If the consumer returns for a second loan 20 days later, the lender cannot make a covered short-term loan under § 1041.7. However, the lender could make a covered short-term loan under § 1041.5 or a covered longer-term loan under § 1041.9, § 1041.11, or § 1041.12.

Paragraph 7(c)(3)

1. *Loan sequence limitation.* Section 1041.7(c)(3) provides that a lender cannot make a covered short-term loan under § 1041.7 if the loan would result in the consumer having a loan sequence of more than three covered short-term loans under § 1041.7 made by any lender. This requirement applies regardless of whether any or all of the loans in the loan sequence are made by the same lender, an affiliate, or unaffiliated lenders. See comments 7(b)(1)-1 and -2 for further clarification on the definition of loan sequence, as well as § 1041.2(a)(11) and accompanying commentary. For example, assume a consumer is made a covered short-term loan under the requirements of § 1041.7 on February 1 that has a contractual due date of February 15; the consumer repays the loan on February 15 and the consumer returns to the lender on March 1 for another loan. The second loan would be part of the same loan sequence because 30 or less days have elapsed since repayment of the first loan. Assume the lender makes the second loan, which has a contractual due date of March 15; the consumer repays the loan on March 15 and the consumer returns to the lender on April 1 for another loan. The third loan would be part of the same loan sequence as the first and second loans because 30 or less days have elapsed since repayment of the second loan. Assume the lender makes the third loan, which has a contractual due date of April 15, and the consumer repays the loan on April 15. The consumer would not be permitted to receive another covered short-term loan under § 1041.7 until a 30-day period following April 15 has elapsed, that is until after May 15, assuming the other requirements under § 1041.7 are satisfied. Loans that are rollovers count toward the sequence limitation under § 1041.7(c)(3). For further clarification on how the requirements

under § 1041.7 apply to rollovers, see comment 7(b)(1)-3.

Paragraph 7(c)(4)

1. *Consecutive 12-month period.* Section 1041.7(c)(4) requires that a covered short-term loan made under § 1041.7 not result in the consumer receiving more than six covered short-term loans during a consecutive 12-month period or having covered short-term loans outstanding for an aggregate period of more than 90 days during a consecutive 12-month period. The consecutive 12-month period begins on the date that is 12 months prior to the proposed contractual due date of the new covered short-term loan to be made under § 1041.7 and ends on the proposed contractual due date. The lender must review the consumer's borrowing history on covered short-term loans for the 12 months preceding the consummation date of the new covered short-term loan less the period of proposed contractual indebtedness on that loan. For example, for a new covered short-term loan to be made under § 1041.7 with a proposed contractual term of 14 days, the lender must review the consumer's borrowing history during the 351 days preceding the consummation date of the new loan. The lender also must consider the making of the new loan and the days of proposed contractual indebtedness on that loan to determine whether the requirement under § 1041.7(c)(4) regarding the total number of covered short-term loans and total time of indebtedness on covered short-term loans during a consecutive 12-month period is satisfied.

Paragraph 7(c)(4)(i)

1. *Total number of covered short-term loans.* Section 1041.7(c)(4)(i) provides that a lender cannot make a covered-short term loan under § 1041.7 if the loan would result in the consumer having more than six covered short-term loans outstanding in any consecutive 12-month period. In addition to the new loan, all covered short-term loans made to the consumer during the consecutive 12-month period under either § 1041.5 or § 1041.7 are counted toward the limit. This requirement applies regardless of whether any or all of the loans subject to the limitations are made by the same lender, an affiliate, or an unaffiliated lender. Under § 1041.7(c)(4)(i), the lender must use the consumer's borrowing history to determine whether the loan would result in the consumer having more than six covered short-term loans outstanding during a consecutive 12-month period. A lender may make a loan that would satisfy the requirement under § 1041.7(c)(4)(i) even if the six-loan limit would prohibit the consumer from taking out one or two subsequent loans in the sequence.

2. *Example.* Assume that a lender seeks to make a covered short-term loan to a consumer under § 1041.7 with a contractual duration of 14 days. Assume, further, that the lender determines that during the 351 days preceding the consummation date of the new loan, the consumer had outstanding a total of three covered short-term loans. The new loan would be the fourth covered short-term loan that was outstanding during a consecutive 12-month period and, therefore, would satisfy the requirement. Alternatively, if the lender determined that the consumer had outstanding a total of six covered short-term loans during the 351 days preceding the consummation date of the new loan, the new loan would be the seventh covered short-term loan outstanding during a consecutive 12-month period. In this instance, the requirement would not be satisfied, and the lender would be prohibited from making a new covered short-term loan under § 1041.7.

Paragraph 7(c)(4)(ii)

1. *Aggregate period of indebtedness.* Section 1041.7(c)(4)(ii) provides that a lender cannot make a covered short-term loan under § 1041.7 if the loan would result in the consumer having covered short-term loans outstanding for an aggregate period of more than 90 days in any consecutive 12-month period. In addition to the proposed contractual duration of the new loan, the aggregate period in which all covered short-term loans made to the consumer during the consecutive 12-month period under either § 1041.5 or § 1041.7 were outstanding is counted toward the limit. This requirement applies regardless of whether any or all of the loans subject to the limitations are made by the same lender, an affiliate, or an unaffiliated lender. Under § 1041.7(c)(4)(ii), the lender must use the information it has obtained about the consumer's borrowing history to determine whether the loan would result in the consumer having covered short-term loans outstanding for an aggregate period of more than 90 days during a consecutive 12-month period. A lender may make a loan that would satisfy the requirement under § 1041.7(c)(4)(ii) even if the 90-day limit would prohibit the consumer from taking out one or two subsequent loans in the sequence.

2. *Example.* Assume that Lender A seeks to make a covered short-term loan under § 1041.7 with a contractual duration of 14 days. Assume, further, that Lender A determines that during the 351 days preceding the consummation date of the new loan, the consumer had outstanding three covered short-term loans made by Lender A and a fourth covered short-term loan made by Lender B. Assume that each of the three loans made by Lender A had a contractual duration of 14 days and the loan made by Lender B had a contractual duration of 30 days, for an aggregate total of 72 days of contractual indebtedness. Assume, further, that the consumer repaid each loan on its contractual due date. The new loan, if made, would result in the consumer having covered short-term loans outstanding for an aggregate period of 86 days during the consecutive 12-month period. Therefore, the requirement regarding aggregate time of indebtedness would be satisfied. Alternatively, if Lender A determined that during the 351 days preceding the consummation date of the new loan, the consumer had obtained three 14-day loans from Lender A, a 14-day loan from Lender B, and a 30-day loan from Lender C and repaid all five loans on their contractual due dates, the consumer would have had a total of 86 days of contractual indebtedness. The new loan would result in the consumer having covered short-term loans outstanding for an aggregate period of 100 days during the consecutive 12-month period. In this instance, the requirement would not be satisfied, and the lender would be prohibited from making a new covered short-term loan under § 1041.7.

7(d) Determining Period Between Consecutive Covered Short-Term Loans Made Under the Conditional Exemption

1. *Non-covered bridge loan.* See § 1041.2(a)(13) for the definition of non-covered bridge loan.

2. *Counting of loan sequence when making non-covered bridge loan.* Section 1041.7(d)(1) specifies certain rules for determining whether a loan is part of a loan sequence when a lender or an affiliate makes both covered short-term loans under § 1041.7 and a non-covered bridge loan in close succession in time. If the lender or an affiliate makes a non-covered bridge loan during the time period in which any covered short-term loan made by the lender or an affiliate under § 1041.7 is outstanding and for 30 days thereafter, the days during which the non-covered bridge loan is outstanding must not be counted toward the determination of whether a subsequent loan made by the lender or an affiliate under § 1041.7 is part of the same loan sequence as the prior covered short-term loan under § 1041.7.

3. *Example.* Assume a lender makes a covered short-term loan (Loan X) to a consumer under § 1041.7 with a contractual duration of 14 days, Loan X is the first loan in a loan sequence, and the consumer repays Loan X on the contractual due date. Assume, further, that 10 days later the lender makes a non-recourse pawn loan (Loan Y) to the consumer, which under § 1041.2(a)(13) is defined as a non-covered bridge loan; Loan Y has a contractual duration of 30 days; and the consumer repays Loan Y on the contractual due date. Assume, further, that the consumer returns to the lender 10 days later and requests another covered short-term loan under § 1041.7 (Loan Z). The consummation date of Loan Z would be 50 days after the date on which Loan X was repaid. Because more than 30 days has elapsed since Loan X was repaid, Loan Z normally would not be considered part of the same loan sequence as Loan X. However, in this instance, the 30 days during which Loan Y was outstanding are not counted toward the determination of whether Loan X and Loan Z are part of the same loan sequence. If those 30 days are not counted, only 20 days have elapsed between repayment of Loan X and the consummation date of Loan Z. Therefore, Loan X and Loan Z are part of the same loan sequence, and Loan Z would be counted as the second loan in the loan sequence. Thus, Loan Z would be subject, among other requirements, to the requirement under § 1041.7(b)(3)(ii) that its principal amount be no greater than two-thirds of the principal amount of Loan X.

7(e) Disclosures

1. *General.* Section 1041.7(e) sets forth two main disclosure requirements related to a loan made under the requirements in § 1041.7. The first, set forth in § 1041.7(e)(2)(i), is a notice of the restriction on the principal amount on the loan and

restrictions on the number of future loans and the principal amounts of such loans required to be provided to a consumer when the consumer seeks the first loan in a sequence of covered short-term loans made under § 1041.7. The second, set forth in § 1041.7(e)(2)(ii), is a notice of the restriction on the principal amount on the loan and the prohibition on another similar loan for at least 30 days after the loan is repaid required to be provided to a consumer when the consumer seeks the third loan in a sequence of covered short-term loans made under § 1041.7.

7(e)(1) General Form of Disclosures

7(e)(1)(i) Clear and Conspicuous

1. *Clear and conspicuous standard.* Disclosures are clear and conspicuous for purposes of § 1041.7(e) if they are readily understandable by the consumer and their location and type size are readily noticeable to the consumer.

7(e)(1)(ii) In Writing or Electronic Delivery

1. *General.* Section 1041.7(e)(1)(ii) requires that disclosures required by § 1041.7 be provided to the consumer in writing or through electronic delivery.

2. *E-Sign Act requirements.* The notices required by §§ 1041.7(e)(2)(i) and 1041.7(e)(2)(ii) may be provided to the consumer in electronic form without regard to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

7(e)(1)(iii) Retainable

1. *General.* Electronic disclosures are retainable for purposes of § 1041.7(e) if they are in a format that is capable of being printed, saved, or emailed by the consumer.

7(e)(1)(iv) Segregation Requirements for Notices

1. *Segregated additional content.* Although segregated additional content that is not required by this section may not appear above, below, or around the required content, this additional content may be delivered through a separate form, such as a separate piece of paper or Web page.

7(e)(1)(vi) Model Forms

1. *Safe harbor provided by use of model forms.* Although the use of the model forms and clauses is not required, lenders using them will be deemed to be in compliance with the disclosure requirement with respect to such model forms.

7(e)(2) Notice Requirements

7(e)(2)(i) First Loan Notice

1. *As applicable standard.* Due to the requirements in § 1041.7(c)(4), a consumer may not be eligible for a sequence of two or three covered short-term loans under § 1041.7. This consumer may be permitted to obtain only one or two loans in a sequence of covered short-term loans under § 1041.7. Under these circumstances, § 1041.7(e)(2)(i) would require the lender to modify the notice in § 1041.7(e)(2)(i) to reflect these limitations on subsequent loans. For example, if a consumer can receive only a sequence of two covered short-term loans under § 1041.7 because of the requirements in § 1041.7(c)(4), the lender would have to modify the notice to list the maximum principal amount on loans 1 and 2 and to indicate that loan 3 would not be permitted.

7(e)(3) Timing

1. *General.* Section 1041.7(e)(3) requires a lender to provide the notices required in § 1041.7(e)(2)(i) and (ii) to the consumer before a covered short-term loan under § 1041.7 is consummated. For example, a lender can provide the notice after a consumer has completed a loan application but before the consumer has signed the loan agreement. A lender would not have to provide the notices to a consumer who inquires about a covered short-term loan under § 1041.7 but does not fill out an application to obtain this type of loan.

2. *Electronic notices.* If a lender delivers a notice required by this section electronically in accordance with § 1041.7(e)(1)(ii), § 1041.7(e)(3) requires a lender to provide the electronic notice to the consumer before a covered short-term loan under § 1041.7 is consummated. Specifically, § 1041.7(e)(3) requires a lender to present the retainable notice to the consumer before the consumer is contractually obligated on the loan. To comply with § 1041.7(e)(3), a lender could, for example, display a screen on a web browser with the notices required § 1041.7(e)(2)(i) and (ii), provided the screen can be emailed, printed, or saved, before a covered short-term loan under § 1041.7 has been consummated.

Section 1041.9—Ability-to-Repay Determination Required

9(a) Definitions

9(a)(1) Basic Living Expenses

1. *General.* For purposes of the ability-to-repay determination required under § 1041.9(b), a lender must make a reasonable determination that the consumer's residual income is sufficient for the consumer to make all payments under the covered longer-term loan and to meet basic living expenses during the term of the loan. In addition, for a covered longer-term balloon-payment loan the lender must determine that the consumer, after making the highest payment under a covered longer-term balloon-payment loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.9(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Examples of goods and services that are necessary for maintaining health and welfare include food and utilities. Examples of goods and services that are necessary for maintaining the ability to produce income include transportation to and from a place of employment and daycare for dependent children. See comment 9(b)-4.

9(a)(2) Major Financial Obligations

1. *General.* Section 1041.9(a)(2) defines major financial obligations as a consumer's housing expense, minimum payments and any delinquent amounts due under debt obligations (including outstanding covered loans), and court- or government agency-ordered child support obligations. Housing expense includes the total periodic amount that the consumer applying for the loan is responsible for paying, such as the amount the consumer owes to a landlord for rent or to a creditor for a mortgage. Minimum payments and any delinquent amounts due under debt obligations include periodic payments for automobile loan payments, student loan payments, other covered and non-covered loan payments, and minimum required credit card payments due during the underwriting period, as well as and any delinquent periodic payments.

9(a)(5) Payment Under the Covered Longer-Term Loan

Paragraphs 9(a)(5)(i) and (ii)

1. *General.* Section 1041.9(a)(5)(i) defines payment under a covered longer-term loan as the combined dollar amount payable by the consumer at a particular time following consummation in connection with the loan, assuming that the consumer has made preceding required payments and in the absence of any affirmative act by the consumer to extend or restructure the repayment schedule or to suspend, cancel, or delay payment for any product, service, or membership provided in connection with the covered loan. Section 1041.9(a)(5)(ii) clarifies that it includes all principal, interest, charges, and fees. A lender may not exclude a portion of the payment simply because a consumer could avoid or delay paying a portion of the payment, such as by requesting forbearance for that portion or by cancelling a service provided in exchange for that portion. For example:

i. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $100 to the lender, which consists of $25 in finance charges, $70 in principal, and a $5 service fee, and the consumer also owes $10 as a credit insurance premium to a separate insurance company. Assume further that under the terms of the loan or other agreements entered into in connection with the loan, the consumer has the right to cancel the credit insurance at any time and avoid paying the $10 credit insurance premium and also has the option to pay the $70 in principal at a later date. The payment under the loan is $110.

ii. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $25 in finance charges to the lender. Under the terms of the loan, the consumer has the option of paying $50 in principal on that date, in which case the lender would charge $20 in finance charges instead. The payment under the loan is $25.

iii. Assume that in connection with a covered longer-term loan, a consumer would owe on a particular date $25 in finance charges to the lender and $70 in principal. Under the terms of the loan, the consumer has the option of logging into her account on the lender's Web site and selecting an option to defer the due date of the $70 payment toward principal. The payment under the covered loan is $95.

Paragraph 9(a)(5)(iii)

1. *General.* Section 1041.9(a)(5)(iii) provides assumptions that a lender must make in calculating the payment under § 1041.9(a)(5) for a covered longer-term loan that is a line of credit (regardless of the extent to which available credit will be replenished as the consumer repays earlier advances). For a line of credit, the amount and timing of the consumer's actual payments after consummation may depend on the consumer's utilization of the credit or on amounts that the consumer has repaid prior to the payments in question. Section 1041.9(a)(5)(iii) requires the lender to calculate the total loan payment assuming that the consumer will utilize the full amount of credit under the loan as soon as the credit is available, that the consumer will make only minimum required payments, and, if the terms of the covered loan would not provide for termination of access to the line of credit by a date certain and for full repayment of all amounts due by a subsequent date certain, that the consumer must repay any remaining balance in one payment on the date that is 180 days following the consummation date.

9(b) Reasonable Determination Required

1. *Overview.* Section 1041.9(b) prohibits a lender from making a covered longer-term loan (other than a covered longer-term loan described in § 1041.11 or § 1041.12) unless it first makes a reasonable determination that the consumer will have the ability to repay the loan according to its terms. Section 1041.9(b) provides minimum standards that the lender's determination must meet to constitute a reasonable determination. The minimum standards provide that the reasonable determination includes three components. Section 1041.9(b)(2)(i) requires that as part of the ability-to-repay determination for any covered longer-term loan, a lender must determine that the consumer's residual income projected in accordance with § 1041.9(c) is sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. Section 1041.9(b)(2)(ii) requires that the ability-to-repay determination for a covered longer-term balloon-payment loan must also include a determination that the consumer, after making the highest payment under the loan, is able to make payments for major financial obligations, to make any remaining payments under the loan, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. Section 1041.9(b)(2)(iii) requires that for a covered longer-term loan for which a presumption of unaffordability applies under § 1041.10, the applicable requirements of § 1041.10 are satisfied. Section 1041.9(b)(2) provides that a determination of a consumer's ability to repay is reasonable only if it is based on projections of consumer net income and major financial obligations that comply with § 1041.9(c).

2. *Reasonable determination.* To comply with the requirements of § 1041.9(b), a lender's determination that a consumer will have the ability to repay a covered longer-term loan must be reasonable in all respects.

i. To be reasonable, a lender's determination of a consumer's ability to repay a covered longer-term loan must:

A. Include the determinations required in § 1041.9(b)(2)(i), (ii), and (iii), as applicable;

B. Be based on reasonable projections of a consumer's net income and major financial obligations in accordance with § 1041.9(c);

C. Be based on reasonable estimates of a consumer's basic living expenses (see comment 9(b)-4);

D. Be consistent with a lender's written policies and procedures required under § 1041.18 and grounded in reasonable inferences and conclusions as to a consumer's ability to repay a covered longer-term loan according to its terms in light of information the lender is required to obtain or consider as part of its determination under § 1041.9(b).

E. Appropriately account for information known by the lender, whether or not the lender is required to obtain the information under part 1041, that indicates that the consumer may not have the ability to repay a covered longer-term loan according to its terms; and

F. Appropriately account for the possibility of volatility in a consumer's income and basic living expenses during the term of the loan. See comment 9(b)(2)(i)-2.

ii. A determination of ability to repay is not reasonable if it:

A. Relies on an implicit assumption that the consumer will obtain additional consumer credit to be able to make payments under the covered longer-term loan, to make payments under major financial obligations, or to meet basic living expenses; or

B. Relies on an assumption that a consumer will accumulate savings while making one or more payments under a covered longer-term loan and that, because of such assumed savings, the consumer will be able to make a subsequent loan payment under the loan.

iii. Evidence of whether a lender's determinations of ability to repay are reasonable may include the extent to which the lender's determinations subject to § 1041.9 result in rates of delinquency, default, and reborrowing for covered longer-term loans that are low, equal to, or high, including in comparison to the rates of other lenders making similar covered longer-term loans to similarly situated consumers.

3. *Payments under the covered longer-term loan.* Under the ability-to-repay requirements in § 1041.9(b)(2)(i) and (iii), a lender must determine the amount and timing of the payments due in connection with the covered longer-term loan. The lender is responsible for calculating, for purposes of the determination and as of consummation, the timing and amount for all payments under the loan based on the terms of the loan. See § 1041.9(a)(5) for the definition of payment under a covered longer-term loan, including assumptions that the lender must make in calculating the amount and timing of payments under a loan that is a line of credit.

4. *Basic living expenses.* To comply with § 1041.9(b), a lender must account for a consumer's need to meet basic living expenses for the applicable period. Section 1041.9(a)(1) defines basic living expenses as expenditures, other than payments for major financial obligations, that the consumer must make for goods and services that are necessary to maintain the consumer's health, welfare, and ability to produce income, and the health and welfare of members of the consumer's household who are financially dependent on the consumer. Sections 9(a)(1) and (b) do not specify a particular method that a lender must use to determine an amount of funds that a consumer requires to meet basic living expenses for an applicable period. For example, a lender is not required to itemize the basic living expenses of each consumer. Nor is a lender required to assume that a consumer's basic living expenses during the term of a prospective covered loan must be equal to the consumer's expenditures for goods and services other than major financial obligations during a recent period preceding consummation of the prospective loan. Whether a particular method complies with the requirements of § 1041.9(b) depends on whether it is reasonably designed to determine whether a consumer would likely be able to make the loan payments and meet basic living expenses without defaulting on major financial obligations or having to rely on new consumer credit during the applicable period.

i. Reasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Setting minimum percentages of income or dollar amounts based on a statistically valid survey of expenses of similarly situated consumers, taking into consideration the consumer's income, location, and household size;

B. Obtaining additional reliable information about a consumer's expenses other than the information required to be obtained under § 1041.9(c), to develop a reasonably accurate estimate of a consumer's basic living expenses; or

C. Any method that reliably predicts basic living expenses.

ii. Unreasonable methods of estimating basic living expenses may include, but are not necessarily limited to, the following:

A. Assuming that a consumer needs no or implausibly low amounts of funds to meet basic living expenses during the applicable period and that, accordingly, substantially all of a consumer's net income that is not required for payments for major financial obligations is available for loan payments; or

B. Setting minimum percentages of income or dollar amounts that, when used in ability-to-repay determinations for covered loans, have yielded high rates of default and reborrowing relative to rates of default and reborrowing of other lenders making covered loans to similarly situated consumers.

Paragraph 9(b)(2)(i)

1. *Applicable period for residual income.* Section 1041.9(b)(2)(i) requires the lender to make a reasonable determination that the consumer's residual income will be sufficient for the consumer to make all payments under the covered longer-term loan and to meet

basic living expenses during the term of the loan.

i. A lender complies with the requirement in § 1041.9(b)(2)(i) if it reasonably determines that for the month with the highest sum of payments (if applicable) under the loan, the consumer's residual income will be sufficient for the consumer to make the payments and to meet basic living expenses during that month, provided that the lender's determination does not rely on a projected increase in the consumer's residual income during the term of the loan. If the same sum of payments would be due in each month, or if the highest sum of payments applies to more than one month, the lender may make the determination for any such month. (See comment 9(b)(2)(i)-2 regarding the requirement to account for the possibility of volatility in a consumer's income and basic living expenses.) For example:

A. Assume a lender considers making a covered longer-term loan to a consumer on March 1. The prospective loan would be repayable in six biweekly payments, the first five of which payments would be for $100, and the last of which payments would be for $275. The lender determines that highest sum of these payments that would be due within a monthly period would be $375. The lender further determines that, based on its projections of net income per month and of payments for major financial obligations per month, the consumer will have $1,200 in monthly residual income, and the lender has no reason to believe this amount of residual income will change during the term of the loan. The lender complies with the requirement in § 1041.9(b)(1) if it reasonably determines that $1,200 will be sufficiently compared to the sum of the $375 in loan payments plus an amount the lender reasonably estimates is adequate for basic living expenses during a monthly period.

2. *Sufficiency of residual income; accounting for volatility in net income and basic living expenses.* The lender must make a reasonable determination that the consumer's residual income will be sufficient for the consumer to make all payments under the loan and to meet basic living expenses during the term of the loan. For a covered longer-term loan, determination of whether residual income will be sufficient for the consumer to make all payments and to meet basic living expenses during the term of the loan requires a lender to reasonably account for the possibility of volatility in the consumer's residual income and basic living expenses over the term of the loan. Reasonably accounting for volatility requires considering the length of the loan term because the longer the term of the loan, the greater the possibility that residual income could decrease or basic living expenses could increase at some point during the term of the loan. For example, if illness or a reduction in work hours could reduce a consumer's net income below levels of net income reasonably projected in accordance with § 1041.9(c), then the likelihood of such events resulting in insufficiency of the consumer's residual income at some point during the term of the loan increases with the length of the term. A lender reasonably accounts for the possibility of volatility in income and basic living expenses by reasonably determining an amount (*i.e.*, a "cushion") by which the consumer's residual income must exceed the sum of the loan payments under the loan and of the amount needed for basic living expenses. A cushion is reasonably determined if it is large enough so that a consumer would have sufficient residual income to make payments under the loan despite volatility in net income or basic living expenses experienced by similarly situated consumers during a similar period of time. Alternatively, a lender reasonably accounts for the possibility of volatility in consumer income by reasonably determining that a particular consumer is unlikely to experience such volatility notwithstanding the experience of otherwise similarly situated consumers during a similar period of time, such as if a consumer has stable employment and receives a salary and sick leave.

9(b)(2)(ii)

1. *General.* Section 1041.9(b)(2)(ii) requires that for a covered longer-term balloon-payment loan, the lender must make a reasonable determination that the consumer, after making the highest loan payment that will be due under the loan, will be able to make payments required for major financial obligations as they fall due, to make any remaining payments under the loan as they fall due, and to meet basic living expenses for 30 days following the date of the highest payment under the loan. (This determination is in addition to the required determination regarding residual income under § 1041.9(b)(2)(i).) Section 1041.9(b) provides that a determination of a consumer's ability to repay is reasonable only if it is based on projections of consumer net income and payments for major financial obligations determined in accordance with § 1041.9(c). Accordingly, a lender must include in its determination under § 1041.9(b)(2)(ii) the amount and timing of payments for major financial obligations that it projects the consumer must make during the 30-day period following the highest loan payment, in accordance with § 1041.9(c). A lender must include in its determination under § 1041.9(b)(2)(ii) the amount and timing of net income that it projects the consumer will receive during the 30-day period following the highest payment, in accordance with § 1041.4(c). For a loan with two or more payments that are equal to each other in amount and higher than all other payments, a lender complies by making the required determination for the 30-day period following the later in time of the two or more higher payments. See comment 9(b)-4, regarding methods for estimating amounts for basic living expenses. For example:

i. Assume a lender considers making a covered longer-term loan to a consumer on March 1. The prospective loan would be repayable in six biweekly payments, the first five of which payments would be for $100, and the last of which payments would be for $275, on May 20. The loan would be a covered longer-term balloon-payment loan as defined in § 1041.2(a)(7), so the requirement in § 1041.9(b)(2)(ii) applies. Assume further that the lender reasonably determines in accordance with § 1041.9(b)(2)(i) that the consumer's residual income for the month with the highest sum of payments, (*i.e.*, $375), the consumer's residual income will be sufficient for the consumer to make the payments and to meet basic living expenses during that month. Assume further that payment of the $275 loan payment, however, will consume all but $1,000 of the consumer's last paycheck preceding or coinciding with the date of the loan payment. The lender projects that the consumer's next receipt of income will not occur until June 3, and the consumer must make a student loan payment of $200 on May 25 and a rent payment of $950 on June 1. The consumer, having made the $275 loan payment, would not be able make payments under two major financial obligations (*i.e.*, the student loan payment and the rent payment), that fall due before June 3. Accordingly, the lender cannot reasonably determine that the consumer has the ability to repay the loan under § 1041.9(b)(2)(ii).

9(c) Projecting Consumer Net Income and Payments for Major Financial Obligations

Paragraph 9(c)(1)

1. *General.* Section 1041.9(c)(1) provides that to be reasonable, a projection of the amount and timing of net income or payments for major financial obligations may be based on amounts and timing stated by the consumer under § 1041.9(c)(3)(i) only to the extent the stated amounts and timing are consistent with verification evidence obtained in accordance with § 1041.9(c)(3)(ii). It further provides that in determining whether and the extent to which such stated amounts and timing are consistent with verification evidence, a lender may reasonably consider other reliable evidence the lender obtains from or about the consumer, including any explanations the lender obtains from the consumer. For example:

A. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The deposit account transaction records the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) show that the consumer receives $900 every two weeks. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

B. Assume that a consumer states that her net income is $900 every two weeks, pursuant to § 1041.9(c)(3)(i). For verification evidence, the lender uses an online income verification service that verifies gross income based on employer-reported payroll information, pursuant to § 1041.9(c)(3)(ii)(A) and comment 9(c)(3)(ii)(A)-1. The verification evidence the lender obtains pursuant to § 1041.9(c)(3)(ii) shows that the consumer receives $1,200 every two weeks. The lender reasonably determines that for a typical consumer, gross income of $1,200 is consistent with net income of $900. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $900 in income every two weeks because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

C. Assume that a consumer states that her minimum required credit card payment is $150 on the fifth day of each month, pursuant to § 1041.9(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) shows that the consumer's minimum monthly payment is $160. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $160 credit card payment on the fifth day of each month because it relies on the stated amount and timing only to the extent they are consistent with the verification evidence.

D. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing biweekly direct deposits of $750, $850, and $995, respectively, during the preceding six-week period. The lender does not comply with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $1,000 in net income every two weeks.

E. Assume that a consumer states that her net income is $1,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing biweekly direct deposits of $1,000, $1,000, and $800, respectively, during the preceding six-week period. The consumer explains that the most recent income was lower than her usual income because she missed two days of work due to illness. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $1,000 in income every two weeks because it reasonably considers the consumer's explanation in determining whether the stated amount and timing is consistent with the verification evidence.

F. Assume that a consumer states that her net income is $2,000 every two weeks, pursuant to § 1041.9(c)(3)(i). The lender obtains electronic records of the consumer's deposit account transactions as verification evidence pursuant to § 1041.9(c)(3)(ii) showing no income transactions in the preceding month but showing consistent biweekly direct deposits of $2,000 from ABC Manufacturing prior to that month. The consumer explains that she was temporarily laid off for one month while ABC Manufacturing retooled the plant where she works but that she recently resumed work there. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of $2,000 in income every two weeks because it reasonably considers the consumer's explanation in determining whether the stated amount and timing is consistent with the verification evidence.

G. Assume that a consumer states that she owes a child support payment of $200 on the first day of each month, pursuant to § 1041.9(c)(3)(i). The national consumer report that the lender obtains as verification evidence pursuant to § 1041.9(c)(3)(ii) does not include any child support payment. The lender complies with § 1041.9(c)(1) if it makes the determination required under § 1041.9(b) based on a projection of a $200 child support payment on the first day of each month because it relies on the stated amount and timing and nothing in the verification evidence is inconsistent with the stated amount and timing.

9(c)(3) Evidence of Consumer Net Income and Payments for Major Financial Obligations

Paragraph 9(c)(3)(i)

1. *Consumer statements.* Section 1041.9(c)(3)(i) requires a lender to obtain a consumer's written statement of the amounts and timing of consumer's net income receipts and payments for categories (*e.g.,* credit card payments, automobile loan payments, housing expense payments, child support payments, etc.) of the consumer's major financial obligations. A consumer's written statement includes a statement the consumer writes on a paper application or enters into an electronic record, or an oral consumer statement that the lender records and retains or memorializes in writing and retains. A lender complies with a requirement to obtain the consumer's statement by obtaining information sufficient for the lender to project the dates on which a payment will be received or paid through the period required under § 1041.9(b)(2). For example, a lender's receipt of a consumer's statement that the consumer is required to pay rent every month on the first day of the month is sufficient for the lender to project when the consumer's rent payments are due.

Paragraph 9(c)(3)(ii)

1. *Verification requirement.* Section 1041.9(c)(3)(ii) establishes requirements for a lender to obtain verification evidence for the amounts and timing of a consumer's net income and required payments for major financial obligations.

Paragraph 9(c)(3)(ii)(A)

1. *Income.* Section 1041.9(c)(3)(ii)(A) requires a lender to obtain a reliable record (or records) of income payment (or payments) covering sufficient history to reasonably support the lender's projection under § 1041.9(c)(1). For purposes of verifying net income, a reliable transaction record includes a facially genuine original, photocopy, or image of a document produced by or on behalf of the payer of income, or an electronic or paper compilation of data included in such a document, stating the amount and date of the income paid to the consumer. A reliable transaction record also includes a facially genuine original, photocopy, or image of an electronic or paper record of depository account transactions, prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account) or money services business check-cashing transactions showing the amount and date of a consumer's receipt of income.

Paragraph 9(c)(3)(ii)(B)

1. *Payments under debt obligations.* To verify a consumer's required payments under debt obligations, § 1041.9(c)(3)(ii)(B) requires a lender to obtain a national consumer report, the records of the lender and its affiliates, and a consumer report obtained from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available. A lender satisfies its obligation under § 1041.10(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.9(c)(3)(ii)(B) to obtain this same consumer report. The amount and timing of a payment required under a debt obligation are the amount the consumer must pay and the time by which the consumer must pay it to avoid delinquency under the debt obligation in the absence of any affirmative act by the consumer to extend, delay, or restructure the repayment schedule.

Paragraph 9(c)(3)(ii)(D)

1. *Housing expense.* Section 1041.9(c)(3)(ii)(D) requires a lender to obtain verification evidence for the consumer's housing expense. It provides three methods for complying with this obligation.

i. For a housing expense under a debt obligation (*i.e.,* a mortgage), § 1041.9(c)(3)(ii)(D) provides that a lender may satisfy the requirement by obtaining a national consumer report that includes the housing expense under a debt obligation pursuant to § 1041.9(c)(3)(ii)(B).

ii. Under § 1041.9(c)(1)(ii)(D)(*1*), a lender may satisfy the obligation to obtain verification evidence of housing expense by obtaining a reliable transaction record (or records) of recent housing expense payments or a rental or lease agreement. For purposes of this alternative, reliable transaction records include a facially genuine original, photocopy or image of a receipt, cancelled check, or money order, or an electronic or paper record of depository account transactions or prepaid account transactions (including transactions on a general purpose reloadable prepaid card account, a payroll card account, or a government benefits card account), from which the lender can reasonably determine that a payment was for housing expense as well as the date and amount paid by the consumer.

iii. Under § 1041.9(c)(1)(ii)(D)(*2*), a lender may satisfy its obligation to obtain verification evidence of housing expense using an amount determined under a reliable method of estimating a consumer's housing expense based on the housing expenses of consumers with households in the locality of the consumer. The lender may estimate a consumer's share of housing expense based on the individual or household housing expenses of similarly situated consumers with households in the locality of the consumer seeking a covered loan. For example, a lender may use data from a statistical survey, such as the American Community Survey of the United States Census Bureau, to estimate individual or household housing expense in the locality (*e.g.,* in the same census tract) where the consumer resides. Alternatively, a lender may estimate individual or household housing expense based on housing expense and other data reported by applicants to the lender, provided that it periodically reviews the reasonableness of the estimates that it relies on using this method by comparing the estimates to statistical survey data or by another method reasonably designed to avoid systematic underestimation of consumers' shares of housing expense. A lender may estimate a consumer's share of household housing expense based on estimated household housing expense by reasonably apportioning the estimated household housing expense by the number of persons sharing housing expense as stated by the consumer, or by another reasonable method.

Section 1041.10—Additional Limitations on Lending—Covered Longer-Term Loans

10(a) Additional Limitations on Making a Covered Longer-Term Loan Under § 1041.9

10(a)(1) General

1. *General.* Section 1041.10 specifies circumstances in which a consumer is presumed to not have the ability to repay a covered longer-term loan under § 1041.9 and circumstances in which a covered longer-term loan under § 1041.9 is prohibited. The presumptions and prohibition apply to making a covered longer-term loan under § 1041.9.

2. *Application to rollovers.* The presumptions in § 1041.10 apply to new covered longer-term loans under § 1041.9, as well as to loans that are a rollover of a prior loan (or what is termed a "renewal" in some States), as applicable. In the event that a lender is permitted under State law to roll over a loan, the rollover would be treated as a new covered longer-term loan subject to the presumptions in § 1041.10. For example, assume a lender is permitted under applicable State law to roll over a covered short-term loan into a covered longer-term balloon-payment loan; the lender makes a covered short-term loan with $500 in principal and a 14-day contractual duration; the consumer returns to the lender on day 14 and is offered the opportunity to roll over the loan for 46 days for a $75 fee. Fewer than 30 days would have elapsed between consummation of the new covered longer-term balloon-payment loan (the rollover) and the consumer having had a covered short-term loan made under § 1041.5 outstanding. Therefore the rollover would be subject to the presumption of unaffordability in § 1041.10(b).

3. *Relationship to § 1041.9.* A lender's determination that a consumer will have the ability to repay a covered longer-term loan is not reasonable within the meaning of § 1041.9 if under § 1041.10(b) or (c) the consumer is presumed to not have the ability to repay the loan and the lender is not able to overcome the presumption in the manner set forth in § 1041.10(d).

10(a)(2) Borrowing History Review

1. *Relationship to § 1041.9(c)(3)(ii)(B).* A lender satisfies its obligation under § 1041.10(a)(2) to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2), if available, when it complies with the requirement in § 1041.9(c)(3)(ii)(B) to obtain this same consumer report.

2. *Availability of information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2).* If no information systems currently registered pursuant to § 1041.17(c)(2) or (d)(2) are available at the time that the lender is required to obtain the information about the consumer's borrowing history, the lender is nonetheless required to obtain information about the consumer's borrowing history from the records of the lender and its affiliates. A lender may be unable to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2) if, for example, all registered information systems are temporarily unavailable.

10(b) Presumption of Unaffordability for Certain Covered Longer-Term Loans Following a Covered Short-Term Loan or Covered Longer-Term Balloon-Payment Loan

10(b)(1) Presumption

1. *General.* Section 1041.10(b)(1) means that a lender cannot make a covered longer-term loan under § 1041.9 during the time period in which the consumer has a covered short-term loan made under § 1041.5 or a covered longer-term balloon-payment loan made under § 1041.9 outstanding and for 30 days thereafter unless either the exception to the presumption in § 1041.10(b)(2) applies or the lender determines in the manner set forth in § 1041.10(d) that there is sufficient improvement in the consumer's financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan. The presumption would not apply, however, if the loan is subject to the prohibition in § 1041.10(e). *See* § 1041.10(e) and accompanying commentary.

10(b)(2) Exception

1. *Exception to the presumption.* Under § 1041.10(b)(2), the presumption in § 1041.10(b)(1) does not apply if every payment on the new covered longer-term loan would be substantially smaller than the largest required payment on the prior loan. For a loan that has a single payment, that single payment is the largest payment for the purposes of § 1041.10(b)(2). For a loan that has multiple, equal-sized payments, the largest payment for purposes of § 1041.10(b)(2) is the amount of each of those payments. For the purposes of § 1041.10(b)(2), the specific timing of payments on the prior loan and the new covered longer-term loan is not relevant to the determination about whether the exception applies.

2. *Example.* The presumption in § 1041.10(b) would cover the situation in which, for example, a consumer had a 30-day covered short-term loan featuring two biweekly payments of $250 each (Loan A) and then sought to reborrow on a covered longer-term loan (Loan B) within 30 days of making the final payment on Loan A. If Loan B was a 90-day covered longer-term loan featuring six biweekly payments of $250 each, the exception to the presumption in § 1041.10(b)(2) would not apply and the consumer would be presumed to not have the ability to repay Loan B. The presumption in § 1041.10(b) would also apply if, in the example above, Loan A was a 42-day loan repayable in two biweekly payments of $100 each and a third biweekly payment of $300 and the biweekly payments on Loan B were still $250, because the payments on Loan B would not be substantially smaller than the largest payment on Loan A. In contrast, if Loan A was repayable in three biweekly payments of $167 and Loan B was repayable in six biweekly payments of $75, then every payment on Loan B would be substantially smaller than the highest payment on Loan A and the exception to the presumption § 1041.10(b)(2) would apply.

10(c) Presumption of Unaffordability for a Covered Longer-Term Loan During an Unaffordable Outstanding Loan

10(c)(1) Presumption

1. *General.* Section 1041.10(c)(1) provides that, except for loans subject to the presumption under § 1041.10(b) or the prohibition under § 1041.10(e), a consumer is presumed not to have the ability to repay a covered longer-term loan under § 1041.9 if, at the time of the lender's determination under § 1041.9, the consumer currently has a covered or non-covered loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the conditions in § 1041.10(c)(1)(i) through (iv) are present. Section 1041.10(c) means that a lender cannot make a covered longer-term loan under § 1041.10 if any of the conditions in § 1041.10(c)(1)(i) through (iv) is present unless either one of the exceptions to the presumption in § 1041.10(c)(2) applies or the lender determines in the manner set forth in § 1041.10(d) that there is sufficient improvement in the consumer's financial capacity such that the consumer will have the ability to repay the new loan according to its terms despite the unaffordability of the prior loan.

2. *Applicability.* Section 1041.10(c) applies any time a consumer has a loan outstanding that was made or is being serviced by the same lender or its affiliate and one or more of the other conditions are present, except if the presumption under § 1041.10(b) or the prohibition under § 1041.10(e) would otherwise apply. For example, if a consumer has outstanding with the same lender a non-covered installment loan with scheduled biweekly payments of $100 and the lender is determining whether the consumer will have the ability to repay a new covered longer-term loan that would have scheduled monthly payments of $200, § 1041.10(c) would apply if the consumer has, within the prior 30 days, expressed an inability to make a payment on the outstanding loan as provided for in § 1041.10(c)(1)(ii). If a consumer instead has a non-covered installment loan outstanding with a different and unaffiliated lender, § 1041.10(c) does not apply.

3. *Indicia of distress.* Section 1041.10(c)(1) applies only if at least one of the four circumstances in § 1041.10(c)(1)(i) through (iv) is present at the time that the lender is making the determination of ability to repay for the new covered longer-term loan under § 1041.9.

Paragraph 10(c)(1)(i)

1. *Significant delinquency.* Under § 1041.10(c)(1)(i), a delinquency is relevant to the presumption if the consumer is more than seven days delinquent at the time that the lender is making the determination under § 1041.9 for the new covered longer-term loan or has been more than seven days delinquent at any point in the 30 days prior to the ability-to-repay determination. Delinquencies that have been cured and are older than 30 days do not trigger the presumption in § 1041.10(c)(1). For example, if a consumer has a non-covered installment loan outstanding with the lender, was 10 days delinquent on a payment three months prior, and is current on payments at the time of the ability-to-repay determination for the new covered longer-term loan, the prior delinquency would not cause the application of the presumption of unaffordability.

Paragraph 10(c)(1)(ii)

1. *Expression of inability to make one or more payments.* Under § 1041.10(c)(1)(ii), a consumer's expression of inability to make one or more payments on the outstanding loan causes the application of the presumption in § 1041.10(c)(1) only if such an expression was made within the 30 days prior to the ability-to-repay determination under § 1041.9 for the new covered longer-term loan. Consumers may express inability to make a payment on the outstanding loan in a number of ways. For example, a consumer may make a statement to the lender or its affiliate that the consumer is unable to or needs help to make a payment or a consumer may request or accept an offer of additional time to make a payment.

Paragraph 10(c)(1)(iii)

1. *Skipped payment.* Under § 1041.10(c)(1)(iii), the presumption in § 1041.10(c)(1) applies if the period of time between consummation of the new covered longer-term loan and the first scheduled payment on that loan would be longer than the period of time between consummation of the new covered longer-term loan and the next regularly scheduled payment on the outstanding loan. Such a transaction would have the effect of permitting the consumer to skip a payment that would otherwise have been due on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender and the loan has a regularly scheduled payment due on March 1 and another due on April 1, the circumstance in § 1041.10(c)(1)(iii) would be present if the new covered longer-term loan would be consummated on February 28 and would not require payment until April 1.

Paragraph 10(c)(1)(iv)

1. *Cash to cover payments on existing loan.* Under § 1041.10(c)(1)(iv), the presumption in § 1041.10(c)(1) applies if the new covered longer-term loan would result in the consumer receiving no disbursement of loan proceeds or an amount of funds as disbursement of the loan proceeds that is not substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered longer-term loan. For example, assume a consumer has a non-covered installment loan outstanding that is being serviced by the same lender, the loan has regularly scheduled payments of $100 due every two weeks, and the new covered longer-term loan would result in the consumer receiving a disbursement of $200. Since $200 in payments on the outstanding loan would be due within 30 days of consummation, the circumstance in § 1041.10(c)(1)(iv) would be present and under § 1041.10(c)(1) the consumer would be presumed to not have the ability to repay the loan. In contrast, if, in the same scenario, the new covered longer-term loan would result in the consumer receiving a disbursement of $1,000, then the disbursement of loan proceeds would be substantially more than the amount due in payments on the outstanding loan within 30 days of consummation of the new covered longer-term loan and the circumstance in § 1041.10(d)(1)(iv) would not be present.

10(c)(2) Exception

1. *Exception.* Under § 1041.10(c)(2), the presumption in § 1041.10(c)(1) does not apply if either the circumstance in § 1041.10(c)(2)(i) or the circumstance in § 1041.10(c)(2)(ii) is present at the time of the ability-to-repay determination under § 1041.9 for the new covered longer-term loan.

Paragraph 10(c)(2)(i)

1. *Size of payments.* Under § 1041.10(c)(2)(i), the presumption in § 1041.10(c)(1) does not apply if the size of every payment on the new covered longer-term loan would be substantially smaller than the size of every payment on the outstanding loan. For example, if a consumer has a non-covered installment loan outstanding from the lender with monthly payments of $300 and the consumer has indicated within the preceding 30 days an inability to make those payments, the consumer generally would be presumed under § 1041.10(c)(1) to not have the ability to repay a new covered longer-term loan under § 1041.9 from the same lender. However, if the new covered longer-term loan would be repayable in monthly payments of $100, then the exception in § 1041.10(c)(2)(i) applies and the new loan would not be subject to the presumption of unaffordability. In contrast, if the new covered longer-term loan would be repayable in monthly payments of $250, then the payments would not be substantially smaller than payments on the outstanding loan and the presumption of unaffordability would still apply.

Paragraph 10(c)(2)(ii)

1. *Cost of credit.* Under § 1041.10(c)(2)(ii), the presumption in § 1041.10(c)(1) does not apply if the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer relative to the outstanding loan. See § 1041.2(a)(18) for the definition of total cost of credit. For example, if a consumer is more than seven days delinquent on payments due on an outstanding covered longer-term loan with a lender and the outstanding loan carries a total cost of credit of 100 percent, the presumption of unaffordability for a new covered longer-term loan with the same lender would generally apply. However, if the new covered longer-term loan would carry a total cost of credit of 45 percent, then the new covered longer-term loan would result in a substantial reduction in the total cost of credit for the consumer. The exception in § 1041.10(c)(2)(ii) would apply and the new loan would not be subject to the presumption of unaffordability. In contrast, if the new covered longer-term loan would carry a total cost of credit of 90 percent, then the new covered longer-term loan would not result in a substantial reduction in the total cost of credit relative to the outstanding loan and the presumption in § 1041.10(c)(1) would apply.

10(d) Overcoming the Presumption of Unaffordability

1. *General.* When a consumer seeks to borrow a covered longer-term loan in certain circumstances, § 1041.10(b) and (c) create a presumption that the consumer would not be able to afford a new covered longer-term loan. Section 1041.10(d) permits the lender to overcome the presumption in limited circumstances evidencing a projected improvement in the consumer's financial capacity for the new loan relative to the consumer's financial capacity since obtaining the prior loan or, in some circumstances, during the prior 30 days. See comments 10(d)-2 and -3 for examples of such circumstances. To overcome the presumption of unaffordability, § 1041.6(d) requires a lender to reasonably determine, based on reliable evidence, that the consumer will have sufficient improvement in financial capacity such that the new loan would not exceed the consumer's ability to repay despite the unaffordability of the prior loan. Section 1041.10(d) requires lenders to measure a sufficient improvement in financial capacity by comparing the consumer's financial capacity during the period for which the lender is required to make an ability-to-repay determination for the new loan pursuant to § 1041.9(b)(2) to the consumer's financial capacity since obtaining the prior loan or, if the prior loan was not a covered short-term loan or a covered longer-term balloon-payment loan, during the 30 days prior to the lender's determination.

2. *Example.* Under § 1041.10(d), a lender may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the need to reborrow is prompted by a decline in income during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) that is not reasonably expected to recur for the period during which the lender is required to make an ability-to-repay determination for the new covered longer-term loan. For instance, assume a consumer obtained a covered longer-term loan with required bi-weekly payments of $100, made the first six payments on that loan, but missed the next two payments and sought to refinance the loan to re-amortize the unpaid balance while keeping the bi-weekly payment constant at $100. The presumption of unaffordability in § 1041.10(c) applies to the new covered longer-term loan. However, suppose that the

consumer presents evidence showing that the consumer normally works 40 hours per week but that during the second week preceding the first missed payment and the first week preceding the second missed payment the consumer was unable to work, and thus the consumer earned half of the consumer's usual pay during that pay period. If the lender reasonably determines that the consumer's residual income projected under § 1041.9(b)(2)(i) for the new covered longer-term loan will return to normal levels and would be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.10(c) has been overcome.

3. *Example.* Under § 1041.10(d), a lender also may reasonably determine that a consumer will have the ability to repay a new loan despite the unaffordability of the prior loan where there is reliable evidence that the consumer's financial capacity will be sufficiently improved relative to the consumer's financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) because of a projected increase in net income or a decrease in major financial obligations for the period during which the lender is required to make an ability-to-repay determination for the new covered longer-term loan. For instance, assume a consumer obtains a covered longer-term loan with monthly payments of $300. During repayment of the loan, the consumer becomes more than seven days delinquent on the outstanding loan and seeks to refinance into a new covered longer-term loan with the same total cost of credit and monthly payments of $250. The presumption of unaffordability in § 1041.10(c)(1) applies to the new covered longer-term loan and the new monthly payment is not sufficiently smaller than the prior payment to fall within the exception in § 1041.10(c)(2). However, suppose that the consumer presents reliable evidence indicating that during the prior 30 days the consumer moved to a new apartment and reduced housing expenses going forward by more than $100. If the lender reasonably determines that the amount of the consumer's residual income projected under § 1041.9(b)(2)(i) for the new covered longer-term loan will exceed the amount of the consumer's residual income during the prior 30 days by an amount that indicates a sufficient improvement in financial capacity for the new covered longer-term loan, and will be sufficient to enable the consumer to make payments on the new loan and still have sufficient income to meet basic living expenses, the lender may determine that the presumption of unaffordability in § 1041.10(c) has been overcome.

4. *Reliable evidence for the determination under § 1041.10(d).* In order to make a reasonable determination under § 1041.10(d) of whether the consumer's financial capacity will have sufficiently improved relative to the consumer's financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) such that the new loan would not exceed the consumer's ability to repay the new loan according to its terms despite the unaffordability of the prior loan, the lender must use reliable evidence. Reliable evidence consists of verification evidence regarding the consumer's net income and major financial obligations sufficient to make the comparison required under § 1041.10(d). For example, bank statements indicating direct deposit of net income from the consumer's employer during the periods of time for which the consumer's residual income must be compared to determine whether sufficient improvement in the consumer's financial capacity has taken place would constitute reliable evidence. In contrast, a self-certification by the consumer that his or her financial capacity has sufficiently improved as compared to his or her financial capacity during the prior 30 days (or, if the prior loan was a covered short-term loan or covered longer-term balloon-payment loan, since obtaining the prior loan) would not constitute reliable evidence unless the lender verifies the facts certified by the consumer through other reliable means.

10(e) Prohibition on Making a Covered Longer-Term Loan Under § 1041.9 Following a Covered Short-Term Loan Made Under § 1041.7

1. *Prohibition.* Section 1041.10(e) provides that, during the time period in which a covered short-term loan made by a lender or its affiliate under § 1041.7 is outstanding and for 30 days thereafter, the lender or its affiliate must not make a covered longer-term loan under § 1041.9 to a consumer. During the time period in which a covered short-term loan made by a lender or its affiliate under § 1041.7 is outstanding and for 30 days thereafter, a lender or its affiliate may make a covered longer-term loan under § 1041.11 or § 1041.12 to a consumer.

10(f) Determining Period Between Consecutive Covered Loans

1. *General.* To determine whether 30 days has elapsed between covered loans for the purposes of § 1041.10(b) and (e), the lender must not count the days during which a non-covered bridge loan is outstanding. *See* comments 1041.6(h)-1 and -2.

Section 1041.11—Conditional Exemption for Certain Covered Longer-Term Loans of Up to 6 Months' Duration

11(a) Conditional Exemption for Certain Covered Longer-Term Loans

1. *General.* Section 1041.11(a) provides a conditional exemption from certain provisions of part 1041 for certain covered longer-term loans that satisfy the conditions and requirements set forth in § 1041.11(b) through (e). Section 1041.11(a) provides a conditional exemption from certain provisions of part 1041 only; nothing in § 1041.11 provides lenders with an exemption from the requirements of other applicable laws, including State laws. The conditions for a loan made under § 1041.11 largely track the conditions set forth by the National Credit Union Administration at 12 CFR 701.21(c)(7)(iii) for a Payday Alternative Loan made by a Federal credit union. All lenders, including Federal credit unions and persons that are not Federal credit unions, are permitted to make loans under § 1041.11, provided that such loans are permissible under other applicable laws, including State laws. Under § 1041.11(a), if the loan term conditions set forth in § 1041.11(b) are satisfied, the lender determines that the consumer's borrowing history on covered loans satisfies the conditions set forth in § 1041.11(c), and the lender satisfies the income documentation condition in § 1041.11(d), then the covered longer-term loan is not subject to § 1041.8, § 1041.9, § 1041.10, or § 1041.15(b). Section 1041.11(e) specifies certain actions that a lender must not take with respect to a loan made under § 1041.11 and requires a lender to furnish information concerning the loan in either of two ways. A lender may use § 1041.11(a) only to make covered longer-term loans; therefore, all loans made under § 1041.11 must have a duration of more than 45 days.

11(b) Loan Term Conditions

Paragraph 11(b)(4)

1. *Payments due no less frequently than monthly.* Under § 1041.11(b)(4), a lender may make a covered longer-term loan under § 1041.11 only if the scheduled payments fall due no less frequently than monthly, and each of those payments is substantially equal in amount and due in substantially equal intervals. Payments may also be due more frequently, such as biweekly.

2. *Substantially equal payments.* Payments are substantially equal in amount if the amount of each scheduled payment on the loan is equal to or within a small variation of the others. For example, if a loan is repayable in six biweekly payments and the amount of each scheduled payment is within 1 percent of the amount of the other payments, the loan is repayable in substantially equal payments. In determining whether a loan is repayable in substantially equal payments, a lender may disregard the effects of collecting the payments in whole cents.

3. *Substantially equal intervals.* The intervals for scheduled payments are substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days of each scheduled payment. For example, a loan for which payment is due every 15 days has payments due in substantially equal intervals. A loan for which payment is due on the 15th day of each month also has payments due in substantially equal intervals. In determining whether payments fall due in substantially equal intervals, a lender may disregard that dates of scheduled payments may be slightly changed because the scheduled date is not a business day, that months have different numbers of days, and the occurrence of leap year. Section 1041.11(b)(4) does not prevent a lender from accepting prepayment on a loan made under § 1041.11.

Paragraph 11(b)(5)

1. *Amortization.* Section 1041.11(b)(5) requires that the scheduled payments fully amortize the loan over the contractual period

and prohibits lenders from making loans under § 1041.11 with interest-only payments or with a payment schedule that front-loads payments of interest and fees. Under § 1041.11(b)(5), the interest portion of each payment must be computed by applying a periodic interest rate to the outstanding balance due. While under § 1041.11(b)(5) the payment amount must be substantially equal for each scheduled payment, the amount of the payment that goes to principal and to interest will vary. The amount of payment applied to interest will be greater for earlier payments when there is a larger principal outstanding; however, that interest must reflect only the periodic rate applied to the outstanding balance.

Paragraph 11(b)(6)

1. *Cost of credit.* Under § 1041.11(b)(6), the conditional exemption is limited to loans that carry a total cost of credit of not more than the cost permissible for Federal credit unions to charge under 12 CFR 701.21(c)(7)(iii), meaning that the consumer must not be required to pay any fees or interest other than those permitted under 12 CFR 701.21(c)(7)(iii).

11(c) Borrowing History Condition

1. *Relevant records.* Under § 1041.11(c), a lender may make a covered longer-term loan under § 1041.11 only if the lender determines from its records and the records of its affiliates that the consumer's borrowing history on covered longer-term loans made under § 1041.11 meets the criteria set forth in § 1041.11(c). The lender is not required to obtain information about a consumer's borrowing history from persons that are not affiliates of the lender, as defined in § 1041.2(a)(2), and is not required to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2).

2. *Determining 180-day period.* For purposes of counting the number of loans made under § 1041.11, the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.11 and ends on the consummation date of such loan.

3. *Total number of loans made under § 1041.11.* Section 1041.11(c) prohibits a lender from making a loan under § 1041.11 if the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates in any consecutive 180-day period. See § 1041.2(a)(15) for the definition of outstanding loan. Under § 1041.11(c), the lender is required to determine from its records and the records of its affiliates the consumer's borrowing history on covered longer-term loans made under § 1041.11 by the lender and its affiliates. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.11 from the lender or its affiliates in a consecutive 180-day period, determined in the manner described in comment 11(c)-2. Section 1041.11(c) does not prevent lenders from making a covered short-term loan subject to the requirements of §§ 1041.5 and 1041.6 or § 1041.7 or a covered longer-term loan subject to the requirements of §§ 1041.9 and 1041.10 or § 1041.12.

4. *Example.* For example, assume that a lender seeks to make a loan under § 1041.11 to a consumer. The lender checks its own records and the records of its affiliates and determines that during the 180 days preceding the consummation date of the prospective loan, the consumer was indebted on two outstanding loans made under § 1041.11 from the lender or its affiliates. The loan, if made, would be the third loan made under § 1041.11 on which the consumer would be indebted during the 180-day period and, therefore, would not be prohibited under § 1041.11(c). If, however, the lender determined that the consumer was indebted on three outstanding loans under § 1041.11 from the lender or its affiliates during the 180 days preceding the consummation date of the prospective loan, the condition in § 1041.11(c) would not be satisfied and the loan could not be extended under § 1041.11.

11(d) Income Documentation Condition

1. *General.* Section 1041.11(d) requires lenders to maintain policies and procedures for documenting proof of recurring income and to comply with those policies and procedures when making loans under § 1041.11. Section 1041.11(d) does not require lenders to undertake the same income documentation procedures required by § 1041.9(c)(3). For the purposes of § 1041.11(d), lenders may establish any procedure for documenting recurring income that satisfies the lender's own underwriting obligations. For example, lenders may choose to use the procedure contained in the National Credit Union Administration's guidance at 12 CFR 701.21(c)(7)(iii) on Payday Alternative Loan programs recommending that Federal credit unions document consumer income by obtaining two recent paycheck stubs.

Paragraph 11(e)(1)(ii)

1. *Restriction on collection methods.* Section 1041.11(e)(1)(ii) prohibits a lender that holds funds on deposit in a consumer's name from taking certain actions in the event that the consumer becomes delinquent or defaults on a loan made under § 1041.11 or the lender anticipates such delinquency or default. The prohibition in § 1041.11(e)(1)(ii) applies regardless of the type of account in which the consumer's funds are held. The prohibition in § 1041.11(e)(1)(ii) does not apply to transactions in which the lender does not hold any funds on deposit for the consumer. For example, if a credit union makes a covered longer-term loan under § 1041.11 to a consumer who also has a checking account with the credit union and the consumer becomes delinquent on payments on the loan, § 1041.11(e)(1)(ii) prohibits the credit union from sweeping the consumer's checking account to a negative balance in order to cover the delinquency. The credit union would not, however, be prohibited from drawing from the consumer's checking account, up to the amount of available funds, to cover the delinquency, if otherwise permitted to do so.

2. *Preservation of other legal recourse.* The prohibition in § 1041.11(e)(1)(ii) does not alter or affect the right of a lender acting under State or Federal law to do any of the following with regard to funds of a consumer held on deposit by the lender if the same procedure is constitutionally available to lenders generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

Section 1041.12—Conditional Exemption for Certain Covered Longer-Term Loans of Up to 24 Months' Duration

12(a) Conditional Exemption for Certain Covered Longer-Term Loans

1. *General.* Section 1041.12(a) provides a conditional exemption from certain provisions of part 1041 for certain covered longer-term loans that satisfy the conditions and requirements set forth in § 1041.12(b) through (f). Section 1041.12(a) provides a conditional exemption from certain provisions of part 1041 only; nothing in § 1041.12 provides lenders with an exemption from the requirements of other applicable laws, including State laws. Under § 1041.12(a), if the loan term conditions set forth in § 1041.12(b) are satisfied, the lender determines that the consumer's borrowing history on covered loans satisfies the condition set forth in § 1041.12(c), and the lender complies with the underwriting method requirement set forth in § 1041.12(d), then the covered longer-term loan is not subject to § 1041.8, § 1041.9, § 1041.10, or § 1041.15(b). Section 1041.12(e) defines the manner in which a lender must calculate the portfolio default rate. Section 1041.12(f) specifies certain actions that a lender must not take with respect to a loan made under § 1041.12 and requires a lender to furnish information concerning the loan in either of two ways. A lender may use § 1041.12(a) only to make covered longer-term loans; therefore, all loans made under § 1041.12 must have a duration of more than 45 days.

12(b) Loan Term Conditions

Paragraph 12(b)(3)

1. *Payments due no less frequently than monthly.* Under § 1041.12(b)(3), a lender may make a covered longer-term loan under § 1041.12 only if the scheduled payments fall due no less frequently than monthly, and each of those payments is substantially equal in amount and due in substantially equal intervals. Payments may also be due more frequently, such as biweekly.

2. *Substantially equal payments.* Payments are substantially equal in amount if the amount of each scheduled payment on the loan is equal to or within a small variation of the others. *See* comment 11(b)(4)-2.

3. *Substantially equal intervals.* The intervals for scheduled payments are substantially equal if the payment schedule requires repayment on the same date each month or in the same number of days of each scheduled payment. *See* comment 11(b)(4)-3.

Paragraph 12(b)(4)

1. *Amortization.* Section 1041.12(b)(4) requires that the scheduled payments fully amortize the loan over the contractual period and prohibits lenders from making loans

under § 1041.12 with interest-only payments or with a payment schedule that front-loads payments of interest and fees. *See* comment 11(b)(5)-1.

Paragraph 12(b)(5)

1. *Cost of credit.* Under § 1041.12(b)(5), the conditional exemption is limited to loans that carry a modified total cost of credit of less than or equal to an annual rate of 36 percent. Under § 1041.12(b)(5), the modified total cost of credit is generally calculated in the same manner in which total cost of credit is calculated under § 1041.2(a)(18)(iii)(A); however, for the purposes of § 1041.12(b)(5) only, the lender may exclude from that calculation a single origination fee meeting the criteria in either § 1041.12(b)(5)(i) or (ii). Loans meeting the criteria for covered longer-term loans under § 1041.3(b)(2) and that have a modified total cost of credit in compliance with § 1041.12(b)(5) remain covered longer-term loans; the effect of § 1041.12(b)(5) is to specify the permissible cost of credit associated with covered longer-term loans made pursuant to the conditional exemption in § 1041.12.

12(b)(5)(i) Fees Based on Costs

1. *General.* A lender is permitted to exclude from the calculation of modified total cost of credit calculation a single origination fee on a covered longer-term loan made under § 1041.12 if the origination fee represents a reasonable proportion of the lender's cost of underwriting loans made under § 1041.12. To be a reasonable proportion of the lender's cost of underwriting, an origination fee must reflect costs that the lender incurs as part of the process of underwriting loans made under § 1041.12. A lender may make a single determination of underwriting costs for all loans made under § 1041.12.

12(b)(5)(ii) Safe Harbor

1. *Safe harbor.* A lender may exclude from the calculation of modified total cost of credit a single origination fee of up to $50 without determining the costs associated with underwriting loans made under § 1041.12.

12(c) Borrowing History Condition

1. *Relevant records.* Under § 1041.12(c), a lender may make a covered longer-term loan under § 1041.12 only if the lender determines from its records and the records of its affiliates that the consumer's borrowing history on covered longer-term loans made under § 1041.12 meets the criterion set forth in § 1041.12(c). The lender is not required to obtain information about a consumer's borrowing history from persons that are not affiliates of the lender, as defined in § 1041.2(a)(2), and is not required to obtain a consumer report from an information system currently registered pursuant to § 1041.17(c)(2) or (d)(2).

2. *Determining 180-day period.* For purposes of counting the number of loans made under § 1041.12, the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.12 and ends on the consummation date of such loan.

3. *Total number of loans made under § 1041.12.* Section 1041.12(c) prohibits a lender from making a loan under § 1041.12 if the loan would result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates in any consecutive 180-day period. See § 1041.2(a)(15) for the definition of outstanding loan. Under § 1041.12(c), the lender is required to determine from its records and the records of its affiliates the consumer's borrowing history on covered longer-term loans made under § 1041.12 by the lender and its affiliates. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than two outstanding loans made under § 1041.12 from the lender or its affiliates in a 180-day period, determined in the manner described in comment 12(c)-2. Section 1041.12(c) does not prevent lenders from making a covered short-term loan under § 1041.5 or § 1041.7 or a covered longer-term loan under § 1041.9 or § 1041.11.

4. *Example.* For example, assume that a lender makes a covered longer-term loan (Loan A) to a consumer under § 1041.12 on March 1, which the consumer repaid on April 30, and then makes a second covered longer-term loan (Loan B) under § 1041.12 to the same consumer on March 15, which the consumer repaid on May 14. Under § 1041.12(c), the lender would not be permitted to make a third covered longer-term loan under § 1041.12 until October 27, 180 days after the consumer repaid Loan A. However, prior to October 27, the lender would be permitted to make another covered longer-term loan under § 1041.9 or § 1041.11 to the same consumer, subject to the limitations contained in those sections.

12(d) Underwriting Method

1. *General.* Section 1041.12(d) requires a lender to maintain policies and procedures for effectuating an underwriting method designed to result in a portfolio default rate of less than or equal to 5 percent per year, and to comply with those policies when making loans under § 1041.12. A lender's underwriting method may be based upon past experience making loans similar to loans meeting the conditions under § 1041.12(b) or based upon a lender's projections in light of the lender's underwriting criteria. A lender may make loans pursuant to § 1041.12 regardless of the performance of prior loan portfolios.

Paragraph 12(d)(1)

1. *Requirement to calculate portfolio default rate.* Under § 1041.12(d)(1), a lender making loans under § 1041.12 must calculate a portfolio default rate for loans made under that section at least once every 12 months on an ongoing basis. A lender must calculate portfolio default rate in the manner set forth in § 1041.12(e).

Paragraph 12(d)(2)

1. *Refund required.* Under § 1041.12(d)(2), if the lender's portfolio default rate for covered longer-term loans made under § 1041.12 exceeds 5 percent per year, the lender must, within 30 calendar days of identifying the excessive portfolio default rate, refund to each consumer that received a loan included in the calculation of the portfolio default rate any origination fee imposed in connection with the covered longer-term loan and excluded from the modified total cost of credit pursuant to § 1041.12(b)(5). A lender may satisfy the refund requirement of § 1041.12 by, at the consumer's election, depositing the refund into the consumer's deposit account.

2. *Prior excessive portfolio default rates.* A lender that has made loans pursuant to § 1041.12 in the past but did not achieve a portfolio default rate of less than or equal to 5 percent may make loans under § 1041.12 for a subsequent 12-month period, provided that the lender refunds origination fees in accordance with § 1041.12(d)(2) for the prior 12-month period. For example, if a lender makes loans under § 1041.12 and the portfolio default rate on those loans is 6 percent following the first 12 months of lending and the lender refunds origination fees in accordance with § 1041.12(d)(2), then the lender may again make loans under § 1041.12 for a subsequent 12-month period.

12(e) Calculation of Portfolio Default Rate

1. *General.* Section 1041.12(e) sets forth the method for calculating the portfolio default rate of a loan portfolio. A lender must use this method of calculation regardless of the lender's accounting methods.

Paragraph 12(e)(2)

1. *Loans included in the calculation.* Section 1041.12(e)(2) requires lenders making loans under § 1041.12 to include in the calculation of portfolio default rate all covered longer-term loans made under that section that were outstanding at any time during the calculation period. Under § 1041.12(e)(2), a lender must calculate the gross portfolio default rate; therefore, the portfolio default rate is unaffected by recoveries through collections following default or 120 days of delinquency. Under § 1041.12(e)(2), a lender must consider in the relevant sum both all loans that are on balance sheet and all loans that are off balance sheet. For example, a lender that originates a covered longer-term loan under § 1041.12 and then sells that loan to a third party must nonetheless include the performance of that loan in the calculation of the portfolio default rate.

Paragraph 12(e)(4)

1. *Timing of calculation.* A lender must calculate the portfolio default rate within 90 days following the last day of the 12-month period included in the calculation. For example, for the period from January 1 through December 31 of a given year, the lender would need to calculate the portfolio default rate under § 1041.12(e) no later than March 31 of the following year.

Paragraph 12(f)(1)(ii)

1. *Restriction on collection methods.* Section 1041.12(f)(1)(ii) prohibits a lender that holds funds on deposit in a consumer's name from taking certain actions in the event that the consumer becomes delinquent or defaults on a loan made under § 1041.12 or the lender anticipates such delinquency or default. The prohibition in § 1041.12(f)(1)(ii) applies regardless of the type of account in which the consumer's funds are held. The prohibition in § 1041.12(f)(1)(ii) does not apply to transactions in which the lender

does not hold any funds on deposit for the consumer. *See* comment 11(e)(1)(ii)-1.

2. *Preservation of other legal recourse.* The prohibition in § 1041.12(f)(1)(ii) does not alter or affect the right of a lender acting under State or Federal law to do any of the following with regard to funds of a consumer held on deposit by the lender if the same procedure is constitutionally available to lenders generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

Section 1041.14—Prohibited Payment Transfer Attempts

14(a) Definitions

14(a)(1) Payment Transfer

1. *General.* A transfer of funds meeting the general definition in § 1041.14(a)(1) is a payment transfer regardless of whether it is initiated by an instrument, order, or means not specified in § 1041.14(a)(1)(i) through (v).

2. *Lender-initiated.* A lender-initiated debit or withdrawal includes a debit or withdrawal initiated by the lender's agent, such as a payment processor.

3. *Any amount due.* The following are examples of funds transfers that are for the purpose of collecting any amount due in connection with a covered loan:

i. A transfer for the amount of a scheduled payment due under a loan agreement for a covered loan.

ii. A transfer for an amount smaller than the amount of a scheduled payment due under a loan agreement for a covered loan.

iii. A transfer for the amount of the entire unpaid loan balance collected pursuant to an acceleration clause in a loan agreement for a covered loan.

iv. A transfer for the amount of a late fee or other penalty assessed pursuant to a loan agreement for a covered loan.

4. *Amount purportedly due.* A transfer for an amount that the consumer disputes or does not legally owe is a payment transfer if it otherwise meets the definition set forth in § 1041.14(a)(1).

5. *Transfers of funds not initiated by the lender.* A lender does not initiate a payment transfer when:

i. A consumer, on her own initiative or in response to a request or demand from the lender, makes a payment to the lender in cash withdrawn by the consumer from the consumer's account.

ii. A consumer makes a payment via an online or mobile bill payment service offered by the consumer's account-holding institution.

iii. The lender seeks repayment of a covered loan pursuant to a valid court order authorizing the lender to garnish a consumer's account.

Paragraph 14(a)(1)(i)

1. *Electronic fund transfer.* Any electronic fund transfer meeting the general definition in § 1041.14(a)(1) is a payment transfer, including but not limited to an electronic fund transfer initiated by a debit card or a prepaid card.

Paragraph 14(a)(1)(ii)

1. *Signature check.* A transfer of funds by signature check meeting the general definition in § 1041.14(a)(1) is a payment transfer regardless of whether the transaction is processed through the check network or through another network, such as the ACH network. The following example illustrates this concept: A lender processes a consumer's signature check through the check system to collect a scheduled payment due under a loan agreement for a covered loan. The check is returned for nonsufficient funds. The lender then converts and processes the check through the ACH system, resulting in a successful payment. Both transfers are payment transfers, because both were initiated by lenders for purposes of collecting an amount due in connection with a covered loan.

Paragraph 14(a)(1)(v)

1. *Transfer by account-holding institution.* Under § 1041.14(a)(1)(v), a transfer of funds by an account-holding institution from a consumer's account held at the same institution is a payment transfer if it meets the general definition in § 1041.14(a)(1). An example of such a payment transfer is when a consumer's account-holding institution initiates an internal transfer of funds from a consumer's account to collect payment on a deposit advance product.

14(a)(2) Single Immediate Payment Transfer at the Consumer's Request

Paragraph 14(a)(2)(i)

1. *Time of initiation.* A one-time electronic fund transfer is initiated at the time that the transfer is sent out of the lender's control. Thus, the electronic fund transfer is initiated at the time that the lender or its agent sends the transfer to be processed by a third party, such as the lender's bank. The following example illustrates this concept: A lender obtains a consumer's authorization for a one-time electronic fund transfer at 2 p.m. and sends the payment entry to its agent, a payment processor, at 5 p.m. on the same day. The agent then sends the payment entry to the lender's bank for further processing the next business day at 8 a.m. The timing condition in § 1041.14(a)(2)(ii) is satisfied, because the lender's agent sent the transfer out of its control within one business day after the lender obtained the consumer's authorization.

Paragraph 14(a)(2)(ii)

1. *Time of processing.* A signature check is processed at the time that the check is sent out of the lender's control. Thus, the check is processed at the time that the lender or its agent sends the check to be processed by a third party, such as the lender's bank. For an example illustrating this concept within the context of initiating a one-time electronic fund transfer, see comment 14(a)(2)(ii)-1.

2. *Check provided by mail.* For purposes of § 1041.14(a)(2)(ii), if the consumer provides the check by mail, the check is deemed to be obtained on the date that the lender receives it.

14(b) Prohibition on Initiating Payment Transfers From a Consumer's Account After Two Consecutive Failed Payment Transfers

1. *General.* When the prohibition in § 1041.14(b) applies, a lender is generally restricted from initiating any further payment transfers from the consumer's account in connection with the covered loan, unless the requirements and conditions in either § 1041.14(c) or (d) are satisfied. The prohibition therefore applies, for example, to payment transfers that might otherwise be initiated to collect payments that later fall due under a loan agreement for a covered loan and to transfers to collect late fees or returned item fees as permitted under the terms of such a loan agreement. In addition, the prohibition applies regardless of whether the lender holds an otherwise valid authorization or instrument from the consumer, including but not limited to an authorization to collect payments by preauthorized electronic fund transfers or a post-dated check. See § 1041.14(c) and (d) and accompanying commentary for guidance on the requirements and conditions that a lender must satisfy to initiate a payment transfer from a consumer's account after the prohibition applies.

2. *Application to bona fide subsequent loan.* If a lender triggers the prohibition in § 1041.14(b), the lender is not prohibited under § 1041.14(b) from initiating a payment transfer in connection with a bona fide subsequent covered loan made to the consumer, provided that the lender has not attempted to initiate two consecutive failed payment transfers from the consumer's account in connection with the bona fide subsequent covered loan.

14(b)(1) General

1. *Failed payment transfer.* A payment transfer results in a return indicating that the consumer's account lacks sufficient funds when it is returned unpaid, or is declined, due to nonsufficient funds in the consumer's account.

2. *Date received.* The prohibition in § 1041.14(b) applies as of the date on which the lender or its agent, such a payment processor, receives the return of the second consecutive failed transfer or, if the lender is the consumer's account-holding institution, the date on which the second consecutive failed payment transfer is initiated.

3. *Return for other reason.* A transfer that results in a return for a reason other than a lack of sufficient funds, such as a return made due to an incorrectly entered account number, is not a failed transfer for purposes of § 1041.14(b).

4. *Failed payment transfer initiated by a lender that is the consumer's account-holding institution.* When a lender that is the consumer's account-holding institution initiates a payment transfer that results in the collection of less than the amount for which the payment transfer is initiated because the account lacks sufficient funds, the payment transfer is a failed payment transfer for purposes of the prohibition in § 1041.14(b), regardless of whether the result is classified or coded in the lender's internal procedures, processes, or systems as a return for nonsufficient funds. Such a lender does not

initiate a failed payment transfer for purposes of the prohibition if the lender merely defers or foregoes debiting or withdrawing payment from an account based on the lender's observation that the account lacks sufficient funds.

14(b)(2) Consecutive Failed Payment Transfers

14(b)(2)(i) First Failed Payment Transfer

1. *Examples.* The following examples illustrate concepts of first failed payment transfers under § 1041.14(b)(2)(i):

i. A lender, having made no other attempts, initiates an electronic fund transfer to collect the first scheduled payment due under a loan agreement for a covered loan, which results in a return for nonsufficient funds. The failed transfer is the first failed payment transfer. The lender, having made no attempts in the interim, re-presents the electronic fund transfer and the re-presentment results in the collection of the full payment. Because the subsequent attempt did not result in a return for nonsufficient funds, the number of failed payment transfers resets to zero. The following month, the lender initiates an electronic fund transfer to collect the second scheduled payment due under the covered loan agreement, which results in a return for nonsufficient funds. That failed transfer is a first failed payment transfer.

ii. A storefront lender, having made no prior attempts, processes a consumer's signature check through the check system to collect the first scheduled payment due under a loan agreement for a covered loan. The check is returned for nonsufficient funds. This constitutes the first failed payment transfer. The lender does not convert and process the check through the ACH system, or initiate any other type of transfer, but instead contacts the consumer. At the lender's request, the consumer comes into the store and makes the full payment in cash withdrawn from the consumer's account. The number of failed payment transfers remains at one, because the consumer's cash payment was not a payment transfer as defined in § 1041.14(a)(2).

14(b)(2)(ii) Second Consecutive Failed Payment Transfer

1. *General.* Under § 1041.14(b)(2)(ii), a failed payment transfer is the second consecutive failed transfer if the previous payment transfer was a first failed payment transfer. The following examples illustrate this concept: A lender, having initiated no other payment transfer in connection with the covered loan, initiates an electronic fund transfer to collect the first scheduled payment due under the loan agreement. The transfer is returned for nonsufficient funds. The returned transfer is the first failed payment transfer. The lender next initiates an electronic fund transfer for the following scheduled payment due under the loan agreement for a covered loan, which is also returned for nonsufficient funds. The second returned transfer is the second consecutive failed payment transfer.

2. *Previous payment transfer.* Section 1041.14(b)(2)(ii) provides that a previous payment transfer includes a payment transfer initiated at the same time or on the same day as the first failed payment transfer. The following example illustrates how this concept applies in determining whether the prohibition in § 1041.14(b) is triggered: A lender has made no other payment transfers in connection with a covered loan. On Monday at 9 a.m., the lender initiates two electronic fund transfers to collect the first scheduled payment under the loan agreement, each for half of the total amount due. Both transfers are returned for nonsufficient funds. Because each transfer is one of two failed transfers initiated at the same time, the lender has initiated a second consecutive failed payment transfer under § 1041.14(b)(2)(ii), and the prohibition in § 1041.14(b) is therefore triggered.

3. *Application to exception in § 1041.14(d).* When, after a second consecutive failed transfer, a lender initiates a single immediate payment transfer at the consumer's request pursuant to the exception in § 1041.14(d), the failed transfer count remains at two, regardless of whether the transfer succeeds or fails. The exception therefore is limited to a single payment transfer. Accordingly, if a payment transfer initiated pursuant to the exception fails, the lender is not permitted to re-initiate the transfer, such as by re-presenting it through the ACH system, unless the lender obtains a new authorization under § 1041.14(c) or (d).

14(b)(2)(iii) Different Payment Channel

1. *General.* Section 14(b)(2)(iii) provides that if a failed payment transfer meets the descriptions set forth in § 1041.14(b)(2), it is the second consecutive failed transfer regardless of whether the first failed transfer was made through a different payment channel. The following example illustrates this concept: A lender initiates an electronic funds transfer through the ACH system for the purpose of collecting the first payment due under a loan agreement for a covered loan. The transfer results in a return for nonsufficient funds. This constitutes the first failed payment transfer. The lender next processes a remotely created check through the check system for the purpose of collecting the same first payment due. The remotely created check is returned for nonsufficient funds. The second failed attempt is the second consecutive failed attempt because it meets the description set forth in § 1041.14(b)(2)(ii).

14(c) Exception for Additional Payment Transfers Authorized by the Consumer

1. *General.* Section 1041.14(c) sets forth one of two exceptions to the prohibition in § 1041.14(b). Under the exception in § 1041.14(c), a lender is permitted to initiate additional payment transfers from a consumer's account after the lender's second consecutive transfer has failed if the additional transfers are authorized by the consumer in accordance with certain requirements and conditions as specified in the rule. In addition to the exception under § 1041.14(c), a lender is permitted to execute a single immediate payment transfers at the consumer's request under § 1041.14(d), if certain requirements and conditions are satisfied.

14(c)(1) General

1. *Consumer's underlying payment authorization or instrument still required.* The consumer's authorization required by § 1041.14(c) is in addition to, and not in lieu of, any separate payment authorization or instrument required to be obtained from the consumer under applicable laws.

14(c)(2) General Authorization Requirements and Conditions

14(c)(2)(i) Required Transfer Terms

1. *General.* Section 1041.14(2)(i) sets forth the general requirement that, for purposes of the exception in § 1041.14(c), the specific date, amount, and payment channel of each additional payment transfer must be authorized by the consumer, subject to a limited exception in § 1041.14(c)(2)(iii)(A) for payment transfers solely to collect a late fee or returned item fee. Accordingly, for the exception to apply to an additional payment transfer, the transfer's specific date, amount, and payment channel must be included in the signed authorization obtained from the consumer under § 1041.14(c)(3)(iii). For guidance on the requirements and conditions that apply when obtaining the consumer's signed authorization, see § 1041.14(c)(3)(iii) and accompanying commentary.

2. *Specific date.* The requirement that the specific date of each additional payment transfer be authorized by the consumer is satisfied if the consumer authorizes the month, day, and year of each transfer.

3. *Amount larger than specific amount.* The exception in § 1041.14(c)(2) does not apply if the lender initiates a payment transfer for an amount larger than the specific amount authorized by the consumer, unless the payment transfer satisfies the requirements and conditions in § 1041.14(c)(2)(iii)(B) for adding the amount of a late fee or returned item fee to an amount authorized by the consumer. Accordingly, such a transfer would violate the prohibition on additional payment transfers under § 1041.14(b).

4. *Smaller amount.* A payment transfer initiated pursuant to § 1041.14(c) is initiated for the specific amount authorized by the consumer if its amount is equal to or smaller than the authorized amount.

14(c)(2)(iii) Special Authorization Requirements and Conditions for Payment Transfers To Collect a Late Fee or Returned Item Fee

Paragraph 14(c)(2)(iii)(A)

1. *General.* If a lender obtains the consumer's authorization to initiate a payment transfer solely to collect a late fee or returned item fee in accordance with the requirements and conditions under § 1041.14(c)(2)(iii)(A), the general requirement in § 1041.14(c)(2) that the consumer authorize the specific date and amount of each additional payment transfer need not be satisfied.

2. *Highest amount.* The requirement that the consumer's signed authorization include a statement that specifies the highest amount that may be charged for a late fee or returned item fee is satisfied, for example, if the statement specifies the maximum amount

permitted under the loan agreement for a covered loan.

3. *Varying fee amounts.* If a fee amount may vary due to the remaining loan balance or other factors, the rule requires the lender to assume the factors that result in the highest amount possible in calculating the specified amount.

Paragraph 14(c)(2)(iii)(B)

1. *General.* The exception in § 1041.14(c)(2) does not apply to a payment transfer to which the amount of a late fee or returned item fee is added to the original amount authorized by the consumer, unless the consumer authorizes the lender to add the amount of late fee or returned item fee to the original amount of a payment transfer in accordance with the requirements and conditions in § 1041.14(c)(2)(iii)(B).

2. *Requirements for specifying highest fee amount.* For guidance on how to satisfy the requirement that the consumer's signed authorization include a statement that specifies the highest amount that may be charged for a late fee or returned item fee, see comment § 1041.14(c)(2)(iii)(A)-2. For guidance on how to calculate the highest fee amount if the amount may vary due to the remaining loan balance or other factors, see comment § 1041.14(c)(2)(iii)(A)-3.

14(c)(3) Requirements and Conditions for Obtaining the Consumer's Authorization

14(c)(3)(ii) Provision of Payment Transfer Terms to the Consumer

1. *General.* A lender is permitted under § 1041.14(c)(3)(ii) to request a consumer's authorization on or after the day that the lender provides the consumer rights notice required by § 1041.15(d). For the exception in § 1041.14(c)(2) to apply, however, the consumer's signed authorization must be obtained no earlier than the date on which the consumer is considered to have received the consumer rights notice, as specified in § 1041.14(c)(3)(iii).

2. *Different options.* Nothing in § 1041.14(c)(3)(ii) prohibits a lender from providing different options for the consumer to consider with respect to the date, amount, or payment channel of each additional payment transfer for which the lender is requesting authorization. In addition, if a consumer declines a request, nothing in § 1041.14(c)(3)(ii) prohibits a lender from making a follow-up request by providing a different set of terms for the consumer to consider. For example, if the consumer declines an initial request to authorize two recurring payment transfers for a particular amount, the lender may make a follow-up request for the consumer to authorize three recurring payment transfers for a smaller amount.

Paragraph 14(c)(3)(ii)(A)

1. *Request by email.* Under § 1041.14(c)(3)(ii)(A), a lender is permitted to provide the required terms and statements to the consumer in writing or in a retainable form by email if the consumer has consented to receive electronic disclosures in that manner under § 1041.15(a)(4) or agrees to receive the terms and statements by email in the course of a communication initiated by the consumer in response to the consumer rights notice required by § 1041.15(d). The following example illustrates a situation in which the consumer agrees to receive the required terms and statements by email after affirmatively responding to the notice:

i. After a lender provides the consumer rights notice in § 1041.15(d) by mail to a consumer who has not consented to receive electronic disclosures under § 1041.15(a)(4), the consumer calls the lender to discuss her options for repaying the loan, including the option of authorizing additional payment transfers pursuant to § 1041.14(c). In the course of the call, the consumer asks the lender to provide the request for the consumer's authorization via email. Because the consumer has agreed to receive the request via email in the course of a communication initiated by the consumer in response to the consumer rights notice, the lender is permitted under § 1041.14(c)(3)(ii)(A) to provide the request to the consumer by that method.

2. *E-Sign Act does not apply to provision of terms and statements.* The required terms and statements may be provided to the consumer electronically in accordance with the requirements for requesting the consumer's authorization in § 1041.14(c)(2)(ii) without regard to the E-Sign Act. However, under § 1041.14(c)(3)(iii), an authorization obtained electronically is valid only if it is signed or otherwise agreed to by the consumer in accordance with the signature requirements in the E-Sign Act. *See* § 1041.14(c)(3)(iii) and comment 14(c)(3)(iii)-1.

3. *Same communication.* Nothing in § 1041.14(c)(3)(ii) prohibits a lender from requesting the consumer's authorization for additional payment transfers and providing the consumer rights notice in the same communication, such as a single written mailing or a single email to the consumer. Nonetheless, the consumer rights notice may be provided to the consumer only in accordance with the requirements and conditions in § 1041.15(d), including, but not limited to, the segregation requirements that apply to the notice. Thus, for example, if a lender mails the request for authorization and the notice to the consumer in the same envelope, the lender must provide the notice on a separate piece of paper, as required under § 1041.15(d).

Paragraph 14(c)(3)(ii)(B)

1. *Request by oral telephone communication.* Nothing in § 1041.14(c)(3)(ii) prohibits a lender from contacting the consumer by telephone to discuss repayment options, including the option of authorizing additional payment transfers. However, under § 1041.14(c)(3)(ii)(B), a lender is permitted to provide the required terms and statements to the consumer by oral telephone communication for purposes of requesting authorization only if the consumer affirmatively contacts the lender in that manner in response to the consumer rights notice required by § 1041.15(d) and agrees to receive the terms and statements by that method of delivery in the course of, and as part of, the same communication.

14(c)(3)(iii) Signed Authorization Required

14(c)(3)(iii)(A) General

1. *E-Sign Act signature requirements.* For authorizations obtained electronically, the requirement that the authorization be signed or otherwise agreed to by the consumer is satisfied if the E-Sign Act requirements for electronic records and signatures are met. Thus, for example, the requirement is satisfied by an email from the consumer or by a code entered by the consumer into the consumer's telephone keypad, assuming that in each case the signature requirements in the E-Sign Act are complied with.

2. *Consumer's affirmative response to the notice.* A consumer affirmatively responds to the consumer rights notice that was provided by mail when, for example, the consumer calls the lender on the telephone to discuss repayment options after receiving the notice.

14(c)(3)(iii)(C) Memorialization Required

1. *Timing.* The memorialization is deemed to be provided to the consumer on the date it is mailed or transmitted.

2. *Form of memorialization.* The requirement that the memorialization be provided in a retainable form is not satisfied by a copy of recorded telephone call, notwithstanding that the authorization was obtained in that manner.

3. *Electronic delivery.* A lender is permitted under § 1041.14(c)(3)(iii)(C) to provide the memorialization to the consumer by email in accordance with the requirements and conditions for requesting authorization in § 1041.14(c)(3)(ii)(A), regardless of whether the lender requested the consumer's authorization in that manner. For example, if the lender requested the consumer's authorization by telephone but also has obtained the consumer's consent to receive electronic disclosures by email under § 1041.15(a)(4), the lender may provide the memorialization to the consumer by email, as specified in § 1041.14(c)(3)(ii)(A).

14(d) Exception for Initiating a Single Immediate Payment Transfer at the Consumer's Request

1. *General.* For guidance on the requirements and conditions that must be satisfied for a payment transfer to meet the definition of a single immediate payment transfer at the consumer's request, see § 1041.14(a)(2) and accompanying commentary.

2. *Application of prohibition.* A lender is permitted under the exception in § 1041.14(d) to initiate the single payment transfer requested by the consumer only once and thus is prohibited under § 1041.14(b) from re-initiating the payment transfer if it fails, unless the lender subsequently obtains the consumer's authorization to re-initiate the payment transfer under § 1041.14(c) or (d). However, a lender is permitted to initiate any number of payment transfers from a consumer's account pursuant to the exception in § 1041.14(d), provided that the requirements and conditions are satisfied for each such transfer. See comment 14(b)(2)(ii)-3 for further guidance on how the prohibition in § 1041.14(b) applies to the exception in § 1041.14(d).

3. *Timing.* A consumer affirmatively contacts the lender when, for example, the

consumer calls the lender after noticing on her bank statement that the lender's last two payment withdrawal attempts have been returned for nonsufficient funds.

Section 1041.15—Disclosure of Payment Transfer Attempts

1. *General.* Section 1041.15 sets forth two main disclosure requirements related to collecting payments from a consumer's account in connection with a covered loan. The first, set forth in § 1041.15(b), is a payment notice required to be provided to a consumer in advance of a initiating a payment transfer from the consumer's account, subject to certain exceptions. The second, set forth in § 1041.15(d), is a consumer rights notice required to be provided to a consumer after a lender receives notice of a second consecutive failed payment transfer from the consumer's account, as described in § 1041.14(b). In addition, § 1041.15 requires an electronic short notice when lenders are providing notices through electronic delivery. The first, set forth in § 1041.15(c), is an electronic short notice that must be provided along with the payment notice. The second, set forth in § 1041.15(e), is an electronic short notice that must be provided along with the consumer rights notice.

15(a) General Form of Disclosures

15(a)(1) Clear and Conspicuous

1. *Clear and conspicuous standard.* Disclosures are clear and conspicuous for purposes of § 1041.15 if they are readily understandable and their location and type size are readily noticeable to consumers.

15(a)(2) In Writing or Electronic Delivery

1. *Electronic delivery.* Section 1041.15(a)(2) allows the disclosures required by § 1041.15 to be provided electronically as long as the requirements of § 1041.15(a)(4) are satisfied, without regard to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

15(a)(3) Retainable

1. *General.* Electronic disclosures, to the extent permitted by § 1041.15(a)(4), are retainable for purposes of § 1041.15 if they are in a format that is capable of being printed, saved, or emailed by the consumer. The general requirement to provide disclosures in a retainable form does not apply when the electronic short notices are provided in via mobile application or text message. For example, the requirement does not apply to an electronic short notice that is provided to the consumer's mobile telephone as a text message. In contrast, if the access is provided to the consumer via email, the notice must be in a retainable form, regardless of whether the consumer uses a mobile telephone to access the notice.

15(a)(4) Electronic Delivery

1. *General.* Section 1041.15(a)(4) permits disclosures required by § 1041.15 to be provided through electronic delivery if the consumer consent requirements under § 1041.15(a)(4) are satisfied.

15(a)(4)(i) Consumer Consent

15(a)(4)(i)(A) General

1. *General.* Section 1041.15(a)(4)(i) permits disclosures required by § 1041.15 to be provided through electronic delivery if the lender obtains the consumer's affirmative consent to receive the disclosures through a particular electronic delivery method. This affirmative consent requires lenders to provide consumers with an option to select a particular electronic delivery method. The consent must clearly show the method of electronic delivery that will be used, such as email, text message, or mobile application. Consent provided by checking a box during the origination process may qualify as in writing. Consent can be obtained for multiple methods of electronic delivery, but the consumer must have affirmatively selected and provided consent for each method.

15(a)(4)(i)(B) Email Option Required

1. *General.* Section § 1041.15(a)(4)(i)(B) provides that when obtaining consumer consent to electronic delivery under § 1041.15(a)(4), a lender must always provide the consumer with an option to receive the disclosures through email. The lender may choose to offer email as the only method of electronic delivery under § 1041.15(a)(4).

15(a)(4)(ii) Subsequent Loss of Consent

1. *General.* The prohibition in § 1041.15(a)(4)(ii) applies to the particular electronic method for which consent is lost. When a lender loses a consumer's consent to receive disclosures via text message, for example, but has not lost the consumer's consent to receive disclosures via email, the lender may continue to provide disclosures via email, assuming that all of the requirements in § 1041.15(a)(4) are satisfied.

2. *Loss of consent applies to all notices.* The loss of consent applies to all notices required by § 1041.15. For example, if a consumer revokes consent in response to the electronic short notice text message delivered along with the payment notice under § 1041.15(c), that revocation also applies to text delivery of the electronic short notice that would be delivered with the consumer rights notice under § 1041.15(e).

Paragraph 15(a)(4)(ii)(A)

1. *Revocation.* For purposes of § 1041.15(a)(4)(ii)(A), a consumer may revoke consent for any reason and by any reasonable means of communication. Reasonable means of communication may include calling the lender and revoking consent orally, mailing a revocation to an address provided by the lender on its consumer correspondence, sending an email response or clicking on a revocation link provided in an email from the lender, and responding by text message to a text message sent by the lender.

Paragraph 15(a)(4)(ii)(B)

1. *Notice.* A lender receives notification for purposes of § 1041.15(a)(4)(ii)(B) when the lender receives any information indicating that the consumer did not receive or is unable to receive disclosures in a particular electronic manner. Examples of notice include but are not limited to the following:

i. An email returned with a notification that the consumer's account is no longer active or does not exist.

ii. A text message returned with a notification that the consumer's mobile telephone number is no longer in service.

iii. A statement from the consumer that the consumer is unable to access or review disclosures through a particular electronic delivery method.

15(a)(5) Segregation Requirements for Notices

1. *Segregated additional content.* Although segregated additional content that is not required by § 1041.15 may not appear above, below, or around the required content, additional content may be delivered through a separate form, such as a separate piece of paper or Web page.

15(a)(7) Model Forms

1. *Safe harbor provided by use of model forms.* Although the use of the model forms and clauses is not required, lenders using them will be deemed to be in compliance with the disclosure requirement with respect to such model forms.

15(b) Payment Notice

15(b)(2) Exceptions

15(b)(2)(ii) General

1. *Exception for first transfer applies even if the transfer is unusual.* The exception in § 1041.15(b)(2)(ii) applies even if the situation would otherwise trigger the additional disclosure requirements for unusual attempts under § 1041.15(b)(5). For example, if the payment channel of the first transfer after obtaining the consumer's consent is different than the payment channel used before the prohibition under § 1041.14 was triggered, the exception in § 1041.15(b)(2)(ii) applies.

2. *Multiple transfers in advance.* If a consumer has affirmatively consented to multiple transfers in advance, as described in § 1041.14(c)(2)(ii)(B), the exception in § 1041.15(b)(2)(ii) applies only to the first transfer.

15(b)(3) Timing

15(b)(3)(i) Mail

1. *General.* The six business-day period begins when the lender places the notice in the mail, not when the consumer receives the notice. For example, if a lender places the notice in the mail on Monday, June 1, the lender may initiate the transfer of funds on Monday, June 8, the 6th business day following mailing of the notice.

15(b)(3)(ii) Electronic Delivery

Paragraph 15(b)(3)(ii)(A)

1. *General.* The three-business-day period begins when the lender sends the notice, not when the consumer receives or is deemed to have received the notice. For example, if a lender sends the notice by email on Monday, June 1, the lender may initiate the transfer of funds on Thursday, June 4, the third business day following transmitting the notice.

Paragraph 15(b)(3)(ii)(B)

1. *General.* In some circumstances, a lender may lose a consumer's consent to receive

disclosures through a particular electronic delivery method after the lender has provided the notice. In such circumstances, the lender may initiate the transfer for the payment currently due as scheduled. If the lender is scheduled to make any future payment attempt following the one that was disclosed in the previously provided notice, the lender must provide notice for that future payment attempt through alternate means, in accordance with the applicable timing requirements in § 1041.15(b)(3).

2. *Alternate Means.* The alternate means may include a different electronic delivery method that the consumer has consented to, in person, or by mail, in accordance with the applicable timing requirements in § 1041.15(b)(3).

3. *Illustrative example.* The following example illustrates actions that would satisfy the requirement in § 1041.15(b)(3)(ii)(B) to provide the notice again in accordance with any of the timing requirements in § 1041.15(b)(3):

i. On the seventh business day prior to initiating a transfer, a lender transmits the notice to the consumer via email and immediately receives a notification that the email account is no longer active. The next business day, the lender mails the notice to the consumer. Because the notice is mailed on the sixth business day prior to initiating the transfer, the timing requirement in § 1041.15(b)(3)(i) is satisfied.

15(b)(4) Content Requirements

15(b)(4)(ii) Transfer Terms

15(b)(4)(ii)(A) Date

1. *Date.* The initiation date is the date that the payment transfer is sent outside of the lender's control. Accordingly, the initiation date of the transfer is the date that the lender or its agent sends the payment to be processed by a third party. For example, if a lender sends its ACH payments to its payment processor, the lender's agent, on Monday, June 1, but the processor does not submit them to its bank and the ACH network until Tuesday, June 2, the date of the payment transfer is Tuesday the 2nd.

15(b)(4)(ii)(B) Amount

1. *Amount.* The amount of the transfer is the total amount of money that will be transferred from the consumer's account, regardless of whether the total corresponds to the amount of a regularly scheduled payment. For example, if a single transfer will be initiated for the purpose of collecting a regularly scheduled payment of $50.00 and a late fee of $30.00, the amount that must be disclosed under § 1041.15(b)(4)(ii)(B) is $80.00.

15(b)(4)(ii)(E) Payment Channel

1. *General.* Payment channel is the specific payment network that the transfer will travel through. For example, a lender that uses the consumer's paper check information to initiate a payment transfer through the ACH network would use the ACH payment channel under § 1041.15(b)(4)(ii)(E). A lender that initiates a payment from a consumer's prepaid card would specify whether that payment is processed as an ACH transfer, PIN debit network payment, or credit card network payment.

2. *Illustrative examples.* Payment channel includes, but is not limited to, ACH transfer, check, remotely created check, remotely created payment order, internal transfer, and debit card payment. The use of the term "debit card payment" may include any network that processes debit card payments, including the PIN debit network and credit card network.

15(b)(4)(iv) Payment Breakdown

15(b)(4)(iv)(B) Principal

1. *General.* The amount of the payment that is applied to principal must always be included in the payment breakdown table, even if the amount applied is $0.

15(b)(4)(iv)(D) Fees

1. *General.* This field must only be provided if some of the payment amount will be applied to fees. In situations where more than one fee applies, fees may be disclosed separately or aggregated. A lender may use its own term to describe the fee, such as "late payment fee."

15(b)(4)(iv)(E) Other Charges

1. *General.* This field must only be provided if some of the payment amount will be applied to other charges. In situations when more than one other charge applies, other charges may be disclosed separately or aggregated. A lender may use its own term to describe the charge, such as "insurance charge."

15(b)(5) Additional Content Requirements for Unusual Attempts

1. *General.* If the payment transfer is unusual according to the circumstances described in § 1041.15(b)(5), the payment notice must contain both the content required by § 1041.15(b)(4), except for APR, and the content required by § 1041.15(b)(5).

5(b)(5)(i) Varying Amount

1. *General.* The additional content requirement in § 1041.15(b)(5)(i) applies in two circumstances. First, the requirement applies when a transfer is for the purpose of collecting a payment that is not specified by amount on the payment schedule, including, for example, a one-time electronic payment transfer to collect a late fee. Second, the requirement applies when the transfer is for the purpose of collecting a regularly scheduled payment for an amount different from the regularly scheduled payment amount according to the payment schedule.

15(b)(5)(ii) Date Other Than Due Date of Regularly Scheduled Payment

1. *General.* The additional content requirement in § 1041.15(b)(5)(ii) applies in two circumstances. First, the requirement applies when a transfer is for the purpose of collecting a payment that is not specified by date on the payment schedule, including, for example, a one-time electronic payment transfer to collect a late fee. Second, the requirement applies when the transfer is for the purpose of collecting a regularly scheduled payment on a date that differs from regularly scheduled payment date according to the payment schedule.

15(c)(2) Content

1. *Identifying statement.* If the lender is using email as the method of electronic delivery, the identifying statement required in § 1041.15(c)(2)(i) must be provided in both the email subject line and the body of the email.

15(d)(2) Timing

1. *General.* Any information provided to the lender or its agent that the payment transfer has failed would trigger the timing requirement provided in § 1041.15(d)(2). For example, if the lender's agent, a payment processor, learns on Monday, June 1 that an ACH payment transfer initiated by the processor on the lender's behalf has been returned for non-sufficient funds, the lender would be required to send the consumer rights notice by Thursday, June 4.

15(e)(2) Content

1. *Identifying statement.* If the lender is using email as the method of electronic delivery, the identifying statement required in § 1041.15(e)(2)(i) must be provided in both the email subject line and the body of the email.

Section 1041.16 Furnishing Information to Registered Information Systems

16(a) Loans Subject To Furnishing Requirement

1. *Loan made under § 1041.11 or § 1041.12.* Section 1041.16(a) requires that, for each covered loan a lender makes other than a covered loan that is made under § 1041.11 or § 1041.12, the lender must furnish the information concerning the loan described in § 1041.16(c) to each information system described in § 1041.16(b). With respect to a loan made under § 1041.11 or § 1041.12, a lender may furnish information concerning the loan described in § 1041.16(c) to each information system described in § 1041.16(b) in order to satisfy § 1041.11(e)(2) or § 1041.12(f)(2), as applicable.

16(b) Information Systems to Which Information Must Be Furnished

1. *Provisional registration and registration of information system while loan is outstanding.* Pursuant to § 1041.16(b)(1), a lender is only required to furnish information about a covered loan to an information system that, at the time the loan is consummated, has been registered pursuant to § 1041.17(c)(2) for 120 days or more or has been provisionally registered pursuant to § 1041.17(d)(1) for 120 days or more or subsequently has become registered pursuant to § 1041.17(d)(2). For example, if an information system is provisionally registered on March 1, 2020, the obligation to furnish information to that system begins on June 29, 2020, 120 days from the date of provisional registration. A lender is not required to furnish information about a loan consummated on June 28, 2020 to an information system that is provisionally registered on March 1, 2020.

2. *Preliminary approval.* Section 1041.16(b) requires that lenders furnish information to information systems that are provisionally registered pursuant to § 1041.17(d)(1) and information systems that are registered pursuant to § 1041.17(c)(2) or § 1041.17(d)(2). Lenders are not required to furnish information to entities that have received preliminary approval for registration

pursuant to § 1041.17(c)(1) but are not registered pursuant to § 1041.17(c)(2).

16(c) Information To Be Furnished

1. *Deadline for furnishing under § 1041.16(c)(1) and (3).* Section 1041.16(c)(1) requires that a lender furnish specified information no later than the date on which the loan is consummated or as close in time as feasible to the date the loan is consummated. Section 1041.16(c)(3) requires that a lender furnish specified information no later than the date the loan ceases to be an outstanding loan or as close in time as feasible to the date the loan ceases to be an outstanding loan. Under each of § 1041.16(c)(1) and (3), if it is feasible to report on the specified date (such as the consummation date), the specified date is the date by which the information must be furnished.

16(c)(1) Information To Be Furnished at Loan Consummation

1. *Type of loan.* Section 1041.16(c)(1)(iii) requires that a lender furnish information that identifies a covered loan as either a covered short-term loan, a covered longer-term loan, or a covered longer-term balloon-payment loan. For example, a lender must identify a covered short-term loan as a covered short-term loan.

2. *Whether a loan is made under § 1041.5, § 1041.7, or § 1041.9.* Section 1041.16(c)(1)(iv) requires that a lender furnish information that identifies a covered loan as made under § 1041.5, made under § 1041.7, or made under § 1041.9. For example, a lender must identify a loan made under § 1041.5 as a loan made under § 1041.5. A lender furnishing information concerning a covered loan that is made under § 1041.11 or § 1041.12 is not required to furnish information that identifies the covered loan as subject to one of these sections.

16(c)(2) Information To Be Furnished While Loan Is an Outstanding Loan

1. *Examples.* Section 1041.16(c)(2) requires that, during the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to § 1014.16 within a reasonable period of the event that causes the information previously furnished to be out of date. Information previously furnished can become out of date due to changes in the loan terms or due to actions by the consumer. For example, if a lender extends the term of a loan, § 1041.16(c)(2) would require the lender to furnish an update to the date that each payment on the loan is due, previously furnished pursuant to § 1041.16(c)(1)(vii)(B), and to the amount due on each payment date, previously furnished pursuant to § 1041.16(c)(vii)(C), to reflect the updated payment dates and amounts. If the amount or minimum amount due on future payment dates changes because the consumer fails to pay the amount due on a scheduled payment date, § 1041.16(c)(2) would require the lender to furnish an update to the amount or minimum amount due on each payment date, previously furnished pursuant to § 1041.16(c)(1)(vii)(C) or (c)(1)(viii)(D), as applicable, to reflect the updated amount or minimum amount due on each payment date. However, if a consumer makes payment on a closed-end loan as agreed and the loan is not modified to change the dates or amounts of future payments on the loan, § 1041.16(c)(2) would not require the lender to furnish an update to information concerning the date that each payment on the loan is due, previously furnished pursuant to § 1041.16(c)(vii)(B), or the amount due on each payment date, previously furnished pursuant to § 1041.16(c)(vii)(C). Section 1041.16(c)(2) does not require a lender to furnish an update to reflect that a payment was made.

2. *Changes to information previously furnished pursuant to § 1041.16(c)(2).* Section 1041.16(c)(2) requires that, during the period that the loan is an outstanding loan, a lender must furnish any update to information previously furnished pursuant to § 1014.16 within a reasonable period of the event that causes the information previously furnished to be out of date. This requirement extends to information previously furnished pursuant to § 1014.16(c)(2). For example, if a lender furnishes an update to the amount or minimum amount due on each payment date, previously furnished pursuant to § 1041.16(c)(1)(vii)(C) or (c)(1)(viii)(D), as applicable, and the amount or minimum amount due on each payment date changes again after the update, § 1041.16(c)(2) requires that the lender must furnish an update to the information previously furnished pursuant to § 1041.16(c)(2).

Section 1041.17 Registered Information Systems

17(b) Eligibility Criteria for Registered Information Systems

17(b)(2) Reporting Capability

1. *Timing.* To be eligible for provisional registration or registration, an entity must possess the technical capability to generate a consumer report containing, as applicable for each unique consumer, all information described in § 1041.16 substantially simultaneous to receiving the information from a lender. Technological limitations may cause some slight delay in the appearance on a consumer report of the information furnished pursuant to § 1041.16, but any delay must reasonable.

17(b)(3) Performance

1. *Relationship with other law.* To be eligible for provisional registration or registration, an entity must perform in a manner that facilitates compliance with and furthers the purposes of part 1041. However, this requirement does not supersede consumer protection obligations imposed upon a provisionally registered or registered information system by other Federal law or regulation. For example, the Fair Credit Reporting Act requires that, "[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. 1681e(b). If including information furnished pursuant to § 1041.16 in a consumer report would cause a provisionally registered or registered information system to violate this requirement, § 1041.17(b)(3) would not require that the information be included in a consumer report.

17(b)(4) Federal Consumer Financial Law Compliance Program

1. *Policies and procedures.* To be eligible for provisional registration or registration, an entity must have policies and procedures that are documented in sufficient detail to implement effectively and maintain its Federal consumer financial law compliance program. The policies and procedures must address compliance with applicable Federal consumer financial laws in a manner reasonably designed to prevent violations and to detect and prevent associated risks of harm to consumers. The entity must also maintain and modify, as needed, the policies and procedures so that all relevant personnel can reference them in their day-to-day activities.

2. *Training.* To be eligible for provisional registration or registration, an entity must provide specific, comprehensive training to all relevant personnel that reinforces and helps implement written policies and procedures. Requirements for compliance with Federal consumer financial laws must be incorporated into training for all relevant officers and employees. Compliance training must be current, complete, directed to appropriate individuals based on their roles, effective, and commensurate with the size of the entity and nature and risks to consumers presented by its activity. Compliance training also must be consistent with written policies and procedures and designed to enforce those policies and procedures.

3. *Monitoring.* To be eligible for provisional registration or registration, an entity must implement an organized and risk-focused monitoring program to promptly identify and correct procedural or training weaknesses so as to provide for a high level of compliance with Federal consumer financial laws. Monitoring must be scheduled and completed so that timely corrective actions are taken where appropriate.

17(b)(5) Independent Assessment of Federal Consumer Financial Law Compliance Program

1. *Assessor qualifications.* An objective and independent third-party individual or entity is qualified to perform the assessment required by § 1041.17(b)(5) if the individual or entity has substantial experience in performing assessments of a similar size, scope, or subject matter; has substantial expertise in both the applicable Federal consumer financial laws and in the entity's or information system's business; and has the appropriate professional qualifications necessary to perform the required assessment adequately.

2. *Written assessment.* A written assessment described in § 1041.17(b)(5) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

17(b)(7) Independent Assessment of Information Security Program

1. *Periodic assessments.* Section 1041.17(b)(7) requires that, to maintain its registration, an information system must

obtain and provide to the Bureau, on at least a biennial basis, a written assessment of the information security program described in § 1041.17(b)(6). The time period covered by each assessment obtained and provided to the Bureau to satisfy this requirement must commence on the day after the last day of the period covered by the previous assessment obtained and provided to the Bureau.

2. *Assessor qualifications.* Professionals qualified to conduct assessments required under § 1041.17(b)(7) include: A person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; and an individual or entity with a similar qualification or certification.

3. *Written assessment.* A written assessment described in § 1041.17(b)(7) need not conform to any particular format or style as long as it succinctly and accurately conveys the required information.

17(c) Registration of Information Systems Prior to Effective Date of § 1041.16

17(c)(1) Preliminary Approval

1. *In general.* An entity seeking to become preliminarily approved for registration pursuant to § 1041.17(c)(1) must submit an application to the Bureau containing information sufficient for the Bureau to determine that the entity is reasonably likely to satisfy the conditions set forth in § 1041.17(b) as of the deadline set forth in § 1041.17(c)(3)(ii). The application must describe the steps the entity plans to take to satisfy the conditions set forth in § 1041.17(b) by the deadline and the entity's anticipated timeline for such steps. The entity's plan must be reasonable and achievable.

17(c)(2) Registration

1. *In general.* An entity seeking to become a registered information system pursuant to § 1041.17(c)(2) must submit an application to the Bureau by the deadline set forth in § 1041.17(c)(3)(ii) containing information and documentation adequate for the Bureau to determine that the conditions described in § 1041.17(b) are satisfied. The application must succinctly and accurately convey the required information, and must include the written assessments described in § 1041.17(b)(5) and (7).

17(d) Registration of Information Systems on or After Effective Date of § 1041.16

17(d)(1) Provisional Registration

1. *In general.* An entity seeking to become a provisionally registered information system pursuant to § 1041.17(d)(1) must submit an application to the Bureau containing information and documentation adequate for the Bureau to determine that the conditions described in § 1041.17(b) are satisfied. The application must succinctly and accurately convey the required information, and must include the written assessments described in § 1041.17(b)(5) and (7).

Section 1041.18—Compliance Program and Record Retention

18(a) Compliance Program

1. *General.* Section 1041.18(a) requires a lender making a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with the applicable requirements in part 1041. These written policies and procedures would provide guidance to a lender's employees on how to comply with the requirements in part 1041. In particular, under § 1041.18(a), a lender would need to develop and follow detailed written policies and procedures reasonably designed to achieve compliance, as applicable, with the ability-to-repay requirements in proposed §§ 1041.5 and 1041.6 and proposed §§ 1041.9 and 1041.10, alternative requirements in proposed §§ 1041.7, 1041.11, and 1041.12, payments requirements in proposed §§ 1041.14 and 1041.15, and requirements on furnishing loan information to registered and provisionally registered information systems in proposed § 1041.16. The provisions and commentary in each section listed above provide guidance on what specific directions and other information a lender would need to include in its written policies and procedures.

2. *Examples.* The written policies and procedures a lender would have to develop and follow under § 1041.18(a) depend on the types of loans that the lender makes. A lender that makes a covered short-term loan under § 1041.5 would have to develop and follow written policies and procedures to ensure compliance with the ability-to-repay requirements, including on projecting a consumer's net income and payments on major financial obligations. In addition, if, for example, a lender uses an estimated housing expense when making a covered short-term loan under § 1041.5, it would have to develop and follow written policies and procedures for reliably estimating housing expense. These written policies and procedures could stipulate that the lender use, for example, data from the American Community Survey of the United States Census Bureau or a prescribed formula for estimating a consumer's housing expense. Among other written policies and procedures, a lender that makes a covered loan under § 1041.5, § 1041.7, or § 1041.9 or a covered longer-term loan under § 1041.11 or § 1041.12 for which loan information is not furnished to a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis would have to develop and follow written policies and procedures to furnish loan information to registered and provisionally registered information systems in accordance with § 1041.16. A lender that makes a covered loan subject to the requirements in § 1041.7 or § 1041.15 would also have to develop and follow written policies and procedures to provide the required disclosures to consumers.

18(b) Record Retention

18(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With a Covered Loan

1. *General.* Section 1041.18(b)(1) requires a lender to retain the loan agreement and documentation obtained in connection with a covered loan. The items of documentation listed in § 1041.18(b)(1) are non-exhaustive. Depending on the types of information it obtains in connection with a covered loan, a lender may need to retain additional documentation as evidence of compliance with part 1041.

2. *Methods of retaining loan agreement and documentation obtained for a covered loan.* Section 1041.18(b)(1) requires a lender either to retain the loan agreement and documentation obtained in connection with a covered loan in original form or to be able to reproduce an image of the loan agreement and documentation obtained for a covered loan accurately. For example, if the lender uses a consumer's pay stub to verify the consumer's net income, § 1041.18(b)(1) requires the lender to either retain a paper copy of the pay stub itself or be able to reproduce an image of the pay stub, and not merely the net income information that was contained in the pay stub. For documentation that the lender receives electronically, such as a consumer report from a registered information system, the lender could retain either the electronic version or a printout of the report.

Paragraph 18(b)(1)(ii)

1. *Types of verification evidence for consumer's net income and major financial obligations.* Section 1041.18(b)(1)(ii) requires a lender to retain the evidence that it used to verify a consumer's borrowing history, net income, and major financial obligations. Comments 5(c)(3)(ii)(A)-1, 5(c)(3)(ii)(B)-1, and 5(c)(3)(ii)(D)-1 and comments 9(c)(3)(ii)(A)-1, 9(c)(3)(ii)(B)-1, and 9(c)(3)(ii)(D)-1 list types of evidence that can be used to verify a consumer's net income and major financial obligations.

2. *Estimate of housing expense.* Sections 1041.5(c)(3)(ii)(D)(*2*) and 1041.9(c)(3)(ii)(D)(*2*) permit a lender to rely on an estimated housing expense for a consumer. Section 1041.18(b)(1)(ii) does not require a lender to retain verification evidence for estimated housing expense. Section 1041.18(b)(2)(ii)(B), however, does require a lender to retain an electronic record of this estimate. Furthermore, § 1041.18(a) requires a lender that uses an estimated housing expense to develop and maintain policies and procedures for reliably estimating housing expense.

18(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Loan

1. *General.* Section 1041.18(b)(2) requires a lender to retain records regarding origination calculations and determinations for a covered loan in electronic, tabular format that establish compliance with part 1041. The items listed in § 1041.18(b)(2) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with part 1041.

2. *Electronic records in tabular format.* Section 1041.18(b)(2) requires a lender to retain records regarding origination calculations and determinations for a covered loan in electronic, tabular format. Tabular format means a format in which the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a widely used spreadsheet or database program. Data formats for image reproductions, such as PDF or document formats used by word processing programs, are not tabular formats. A lender would not have to retain the records required in § 1041.18(b)(2) in a single, combined spreadsheet or database with the records required in § 1041.18(b)(3) through (b)(5). Section 1041.18(b)(2), however, requires a lender to be able to associate the records for a covered loan in § 1041.18(b)(2) with unique loan and consumer identifiers in § 1041.18(b)(4).

18(b)(3) Electronic Records in Tabular Format for a Consumer Who Qualifies for an Exception to or Overcomes a Presumption of Unaffordability for Obtaining a Covered Loan

1. *General.* Section 1041.18(b)(3) requires a lender to retain records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan in electronic, tabular format that establish compliance with part 1041. The items listed in § 1041.18(b)(3) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with part 1041.

2. *Electronic records in tabular format.* Section 1041.18(b)(3) requires a lender to retain records for a consumer who qualifies for an exception to or overcomes a presumption of unaffordability for a covered loan in electronic, tabular format. *See* comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(3) in a single, combined spreadsheet or database with the records required in § 1041.18(b)(2), (b)(3), and (b)(5). Section 1041.18(b)(3), however, requires a lender to be able to associate the records for a covered loan in § 1041.18(b)(3) with unique loan and consumer identifiers in § 1041.18(b)(4).

18(b)(4) Electronic Records in Tabular Format Regarding Loan Type and Terms

1. *General.* Section 1041.18(b)(4) requires a lender to retain records regarding loan type and terms, including unique loan and consumer identifiers, for a covered loan in electronic, tabular format that establish compliance with part 1041. The items listed in § 1041.18(b)(4) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with part 1041.

2. *Electronic records in tabular format.* Section 1041.18(b)(4) requires a lender to retain records regarding loan type and terms for a covered loan in electronic, tabular format. *See* comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(4) in a single, combined spreadsheet or database with the records required in § 1041.18(b)(2), (b)(3), and (b)(5).

18(b)(5) Electronic Records in Tabular Format Regarding Payment History and Loan Performance

1. *General.* Section 1041.18(b)(5) requires a lender to retain records regarding payment history and loan performance for a covered loan in electronic, tabular format that establish compliance with part 1041. The items listed in § 1041.18(b)(5) are non-exhaustive. Depending on the types of covered loans it makes, a lender may need to retain additional records as evidence of compliance with part 1041.

2. *Electronic records in tabular format.* Section 1041.18(b)(5) requires a lender to retain records regarding loan performance and payment history for a covered loan in electronic, tabular format. *See* comment 18(b)(2)-1 for a description of how to retain electronic records in tabular format. A lender would not have to retain the records required in § 1041.18(b)(5) in a single, combined spreadsheet or database with the records required in § 1041.18(b)(2) through (b)(4). Section 1041.18(b)(5), however, requires a lender to be able to associate the records for a covered loan in § 1041.18(b)(5) with unique loan and consumer identifiers in § 1041.18(b)(4).

Paragraph 18(b)(5)(iii)

1. *Maximum number of days, up to 180 days, any full payment was past due.* Section 1041.18(b)(5)(iii) requires a lender that makes a covered loan to retain information on the maximum number of days, up to 180 days, any full payment, including the amount financed, charges included in the total cost of credit, and charges excluded from the cost of credit, was past due, in relation to the payment schedule established in the loan agreement. If a consumer makes a partial payment on the contractual due date and the remainder of the payment 10 days later, the lender would have to record a full payment as being 10 days past due. If multiple full payments were past due, the lender would have to record the number of days for the full payment that was past due for the longest period of time. For example, if a consumer made one full payment on a covered loan 21 days after the contractual due date and another full payment on the loan 8 days after the contractual due date, the lender would have to record a full payment on the loan as being 21 days past due. If a consumer fails to make a full payment on a covered loan more than 180 days after the contractual due date, the lender would only have to record a full payment as being 180 days past due.

Paragraph 18(b)(5)(v)

1. *Initiation of vehicle repossession.* Section 1041.18(b)(5)(v) requires a lender that makes a covered loan with vehicle security to retain information on whether it initiated repossession of the consumer's vehicle. Initiation of vehicle repossession includes but is not limited to the lender mailing a notice to the consumer that it will physically repossess the consumer's vehicle within a certain period of time. Initiation of vehicle repossession also covers other actions that deprive or commence the process of depriving the consumer of the use of her vehicle. For example, if a lender installs a device that can remotely disable a consumer's vehicle as a condition of making the loan, the activation of that device, which renders the consumer's vehicle non-operational, or a notice that the device will be activated on or after a particular date would be an initiation of vehicle repossession.

Section 1041.19—Prohibition Against Evasion

1. *Lender action taken with the intent of evading the requirements of the rule.* Section 1041.19 provides that a lender must not take any action with the intent of evading the requirements of part 1041. In determining whether a lender has taken action with the intent of evading the requirements of part 1041, the form, characterization, label, structure, or written documentation of the lender's action shall not be dispositive. Rather, the actual substance of the lender's action as well as other relevant facts and circumstances will determine whether the lender's action was taken with the intent of evading the requirements of part 1041. If the lender's action is taken solely for legitimate business purposes, it is not taken with the intent of evading the requirements of part 1041. By contrast, if a consideration of all relevant facts and circumstances reveals the presence of a purpose that is not a legitimate business purpose, the lender's action may have been taken with the intent of evading the requirements of part 1041. A lender action that is taken with the intent of evading the requirements of part 1041 may be knowing or reckless. Fraud, deceit, or other unlawful or illegitimate activity may be one fact or circumstance that is relevant to the determination of whether a lender's action was taken with the intent of evading the requirements of part 1041, but fraud, deceit, or other unlawful or illegitimate activity is not a prerequisite to such a finding.

2. *Illustrative examples—lender actions that may have been taken with the intent of evading the requirements of the rule.* The following non-exhaustive examples illustrate lender actions that, depending on the relevant facts and circumstances, may have been taken with the intent of evading the requirements of part 1041 and thus may have violated § 1041.19:

i. A lender makes non-covered loans to consumers without assessing their ability to repay and with a contractual duration of 46 days or longer and a total cost of credit exceeding a rate of 36 percent per annum, as measured at the time of consummation. As a matter of lender practice for loans with these contractual terms, more than 72 hours after consumers receive the entire amount of funds that they are entitled to receive under their loans, the lender routinely offers consumers a monetary or non-monetary incentive (*e.g.,* the opportunity to skip a payment) in exchange for allowing the lender or its affiliate to obtain a leveraged repayment mechanism or vehicle security, and consumers routinely agree to provide the leveraged payment mechanism or vehicle security. The lender began the practice following the issuance of the final rule that is codified in 12 CFR part 1041. The lender's prior practice when making loans to consumers with these contractual terms was to obtain a leveraged payment mechanism or vehicle security at or prior to consummation. *See* § 1041.3(b)(2)(ii) and related commentary.

ii. A lender makes covered short-term loans to consumers without assessing their ability to repay and with a contractual duration of 14 days and a lump-sum repayment structure. The loan contracts provide for a ''recurring late fee'' as a lender remedy that is automatically triggered in the event of a consumer's delinquency (*i.e.,* if a consumer does not pay the entire lump-sum amount on the contractual due date, with no grace period). The recurring late fee is to be paid biweekly while the loan remains outstanding. The amount of the recurring late fee is equivalent to the fee that the lender charges on transactions that are considered rollovers under applicable State law. For consumers who are delinquent, the lender takes no other steps to collect on the loan other than charging the recurring late fees for 90 days. The lender also gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the recurring late fee. *See* §§ 1041.6, 1041.7, and related commentary.

iii. A lender makes non-covered loans to consumers without assessing their ability to repay, and the loans have the following terms: contractual duration of 60 days, repayment through four periodic payments each due every 15 days, and a total cost of credit that is below 36 percent per annum, as measured at the time of consummation. The lender also obtains a leveraged payment mechanism at or prior to consummation. The loan contract imposes a penalty interest rate of 360 percent per annum, *i.e.,* more than 10 times the contractual annual percentage rate, as a lender remedy that is automatically triggered in the event of the consumer's delinquency (*i.e.,* if the consumer does not make a periodic payment or repay the entire loan balance when due, with no grace period). For consumers who are delinquent, the lender takes no steps to collect on the loan other than charging the penalty interest rate for 90 days. The lender also gives non-delinquent consumers who express an inability to repay the principal by the contractual due date the option of paying the penalty interest rate. The lender did not include the penalty interest rate in its loan contracts prior to the issuance of the final rule that is codified in 12 CFR part 1041. *See* § 1041.3(b)(2)(ii) and related commentary.

iv. A lender collects payment on its covered longer-term installment loans primarily through recurring electronic fund transfers authorized by consumers at consummation. As a matter of lender policy and practice, after a first ACH payment transfer to a consumer's account for the full payment amount is returned for nonsufficient funds, the lender makes a second payment transfer to the account on the following day for $1.00. If the second payment transfer succeeds, the lender immediately splits the amount of the full payment into two separate payment transfers and makes both payment transfers to the account at the same time, resulting in two returns for nonsufficient funds in the vast majority of cases. The lender developed the policy and began the practice shortly prior to the effective date of the rule that is codified in 12 CFR part 1041, which, among other provisions, prohibits a lender from attempting to withdraw payment from a consumer's account after two consecutive attempts have failed due to nonsufficient funds, unless the lender obtains a new and specific authorization from the consumer. The lender's prior policy and practice when re-presenting the first failed payment transfer was to re-present for the payment's full amount. *See* §§ 1041.13 and 1041.14 and related commentary.

3. *Illustrative example—lender action not taken with the intent of evading the requirements of the rule.* The following example illustrates a lender action that is not taken with the intent of evading the requirements of part 1041 and thus does not violate § 1041.19. Prior to the effective date of the rule that is codified in 12 CFR part 1041, a lender offers a loan product to consumers with a contractual duration of 30 days (Loan Product A). If the lender had continued to make Loan Product A to consumers following the effective date of the rule, Loan Product A would have been treated as a covered short-term loan, requiring the lender to make an ability-to-repay determination under § 1041.5. However, as of the effective date, the lender ceases offering Loan Product A and, in its place, offers consumers an alternative loan product with a 46-day contractual duration and other terms and conditions that result in treatment as a covered longer-term loan (Loan Product B). For Loan Product B, the lender does not make an ability-to-repay determination under § 1041.9, but the lender satisfies the requirements of § 1041.11 or § 1041.12, *i.e.,* one of the conditional exemptions for covered longer-term loans. *See* §§ 1041.11 and 1041.12 and related commentary.

Dated: June 1, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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Part III

Department of Homeland Security

Coast Guard

33 CFR Parts 140, 145, 148, *et al.*
46 CFR Parts 25, 27, 28, *et al.*
Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 145, 148, and 149

46 CFR Parts 25, 27, 28, 30, 31, 32, 34, 50, 56, 70, 71, 72, 76, 78, 90, 91, 92, 95, 107, 108, 113, 114, 115, 116, 118, 122, 125, 132, 147, 159, 160, 161, 162, 164, 167, 169, 175, 176, 177, 181, 182, 185, 188, 189, 190, and 193

[Docket No. USCG–2012–0196]

RIN 1625–AB59

Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing a final rule for certain design and approval standards for fire protection, detection, extinguishing equipment, and materials on inspected and uninspected vessels, outer continental shelf facilities, deepwater ports, and mobile offshore drilling units. This rule harmonizes Coast Guard approval processes for fire detection and alarm systems, and revises Coast Guard regulations for other types of equipment, materials, and components, such as spanner wrenches, non-metallic pipes, and sprinkler systems. This rule ensures Coast Guard regulations remain current and addresses advances in technology.

DATES: This final rule is effective August 22, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on August 22, 2016.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2012–0196. You may find this docket on the Internet by going to *http://www.regulations.gov*, inserting USCG–2012–0196 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Laurence E. Fisher, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–ENG–4), Coast Guard; telephone 202–372–1447, email *Laurence.E.Fisher@uscg.mil*.

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I. Abbreviations

AHJ	Authority having jurisdiction
ANSI	American National Standards Institute
BLS	Bureau of Labor Statistics
BSEE	Bureau of Safety and Environmental Enforcement
CFR	Code of Federal Regulations
EC	European Community
E.O.	Executive Order
FM	FM Global
FR	Federal Register
GT	Gross Tons
FSS Code	International Code for Fire Safety Systems
IMO	International Maritime Organization
MISLE	Marine Information for Safety and Law Enforcement
MODU	Mobile Offshore Drilling Unit
MRA	Mutual Recognition Agreement
MSC	Marine Safety Committee
NAICS	North American Industry Classification System
NFPA	National Fire Protection Association
NPRM	Notice of proposed rulemaking
NRTL	Nationally Recognized Testing Laboratory
OCMI	Officer in Charge, Marine Inspection
OCS	Outer Continental Shelf
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
RA	Regulatory Analysis
§	Section Symbol
SOLAS	International Convention for the Safety of Life at Sea
UL	Underwriters Laboratory
U.S.C.	United States Code

II. Executive Summary

A. Purpose of the Final Rule

This final rule updates Coast Guard regulations pertaining to certain design and approval standards for fire detection and alarm systems, fire extinguishers, and other fire prevention equipment used on inspected and uninspected vessels, Outer Continental Shelf (OCS) facilities, deepwater ports, and mobile offshore drilling units (MODUs). These updates harmonize our regulations with national and international industry consensus standards, and incorporate other advances in fire protection technologies and standards.

The basis of this regulatory action is the Secretary of Homeland Security's regulatory authority under the following statutes: Section 1333 of Title 43, United States Code (U.S.C), mandates the issuance of safety equipment regulations for OCS facilities; 46 U.S.C. 3306 mandates the issuance of fire fighting material and equipment regulations for Coast Guard-inspected vessels and the issuance of structural fire protection and equipment regulations for small passenger vessels; 46 U.S.C. 3703 mandates fire fighting equipment and material regulations for vessels carrying liquid bulk dangerous cargoes; 46 U.S.C. 4102 authorizes marine safety equipment regulations for fire extinguishers, life preservers, engine flame arrestors, engine ventilation, and emergency locating equipment on uninspected vessels, and authorizes regulations, after consultation with the Towing Safety Advisory Committee, for fire protection and suppression measures on towing vessels; 46 U.S.C. 4302 authorizes safety equipment such as fire fighting equipment regulations for recreational vessels; and 46 U.S.C. 4502 mandates fire extinguisher regulations for some uninspected commercial fishing vessels and authorizes safety equipment regulations for certain other uninspected commercial fishing vessels. Section 1509 of Title 33, U.S.C., authorizes the Coast Guard to promulgate regulations for safety equipment relating to the promotion of safety of life and property in deepwater ports. The Secretary of Homeland Security has delegated these statutory authorities to the Coast Guard through Delegation No. 0170.1.

Under the statutory authorities listed above, the Coast Guard is authorized to develop and maintain standards for fire protection, detection, extinguishing equipment, and materials on inspected and uninspected vessels, OCS facilities, deepwater ports, and MODUs. The Coast Guard implements these authorities through regulations specified in Table 1. Table 1 lists the subchapters in Titles 33 and 46 of the Code of Federal Regulations (CFR) affected by this regulatory action (collectively referred to as "affected subchapters"), and provides a breakdown of each subchapter by subject matter.

TABLE 1—AFFECTED SUBCHAPTERS

CFR title	Subchapter	Parts	Topic
33	N	140–147	Outer Continental Shelf Activities.
33	NN	148–150	Deepwater Ports.
46	C	24–28	Uninspected Vessels.
46	D	30–39	Tank Vessels.
46	F	50–64	Marine Engineering.
46	H	70–89	Passenger Vessels.
46	I	90–105	Cargo and Miscellaneous Vessels.
46	I–A	107–109	Mobile Offshore Drilling Units.
46	J	110–113	Electrical Engineering.
46	K	114–124	Small Passenger Vessels Carrying more than 150 Passengers or Vessels with Overnight Accommodations for more than 49 Passengers.
46	L	125–139	Offshore Supply Vessels.
46	N	140–149	Dangerous Cargoes.
46	Q	159–165	Equipment, Construction and Material Specifications and Approval.
46	R	166–169	Nautical Schools.
46	T	175–187	Small Passenger Vessels (Under 100 Gross Tons (GT)).
46	U	188–196	Oceanographic Research Vessels.

B. Summary of the Major Provisions

The major provisions of this regulatory action harmonize Coast Guard regulations with national and international industry consensus standards and update Coast Guard regulations to incorporate advances in fire protection technology for specific types of fire protection, detection, extinguishing equipment, and materials. These provisions are discussed below and are grouped by equipment type or topic.

Fire detection and alarm systems:

- Provides vessels with the option to meet either the applicable International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the International Maritime Organization (IMO) Fire Safety Systems (FSS) Code requirements, or updated Coast Guard regulations for the design and installation of fire detection and alarm systems. These changes provide vessel owners and/or operators and designers greater flexibility in fire detection and alarm system design for U.S. domestic vessels.
- Consolidates and updates the fire detection and alarm system requirements in 46 CFR subchapter H (passenger vessels). These changes also affect 46 CFR subchapters C, I, K, and T vessels where the regulations refer to subchapter H for fire detection and alarm system requirements. The consolidation of these requirements makes it easier for industry to locate and meet these requirements. These requirements reflect advancements in the fire detection and alarm systems industry, which include the development of digital technology and modern seamless electronic technology for the much larger land-based market. The Coast Guard does not require retrofitting of currently installed systems, but does require any modifications to installed systems or new installations to comply with the updated requirements after a 5-year compliance period.
- Revises Coast Guard approval processes for fire detection and alarm systems by allowing manufacturers of fire detection and alarm systems equipment the option of seeking approval for an entire system or an individual device; making approval processes easier for manufacturers by allowing some approval tests to be completed by an approved third party nationally recognized testing laboratory (NRTL); and requiring the use of the most current and widely used national consensus standards for approval of fire detection and alarm systems. These revisions allow for an easier replacement of individual devices and open the market to small manufacturers or to those dedicated to making components but not producing all components necessary for a complete detection system. They also provide manufacturers more flexibility and options for choosing a laboratory; and align our regulations with the most up-to-date national consensus standards that are already widely used by the fire detection industry.

Fire extinguishers:

- Replaces the Coast Guard's weight-based rating system for fire extinguishers with the UL performance-based rating system. Adopting the national industry standard rating system streamlines the selection, inspection, and approval processes for marine fire extinguishers.
- Revises inspection, maintenance and testing requirements for fire extinguishers by adopting National Fire Protection Association (NFPA) 10 "Standard for Portable Fire Extinguishers" (2010 Edition). NFPA 10 distinguishes between monthly inspections (a visual check) and annual maintenance (a thorough inspection of materials and components, and associated repairs). Vessel crewmembers can continue to perform monthly inspections; however, a certified person is required to conduct annual maintenance. This change aligns Coast Guard regulations with the current industry practice of having annual maintenance performed by certified persons as defined in NFPA 10.
- Codifies the use of UL standards for testing and labeling of fire extinguishers. These standards provide detailed, technical requirements for construction, performance, testing, packaging, and marking of the specific type of extinguisher. This change aligns Coast Guard regulations with current industry practice.
- Reduces the number of spare portable fire extinguishers required on vessels traveling domestic routes. This change is implemented due to the enhanced maintenance requirements that result in more reliable spares, as well as making new spares easier to obtain.

Other fire protection equipment:

- Requires small passenger vessels to carry spanner wrenches for fire hydrants that use 1½ inch diameter hoses. This requirement for small passenger vessels is consistent with spanner wrench carriage requirements for other vessel types, and is necessary to ensure that firehoses can be replaced and deployed as needed.

Fire protection equipment approvals:

- Adds new specification subparts in 46 CFR subchapter Q to address existing and new approval series for fire protection equipment, materials, and components required for use on SOLAS ships. The new approval series and associated subparts codify the standards and procedures currently used by industry to obtain Coast Guard approval for fire protection equipment, materials, and components required on SOLAS ships, and set forth design, construction, testing, and performance requirements satisfying SOLAS requirements for such equipment, materials, and components.
- Codifies an alternative path to Coast Guard approval through an established Mutual Recognition Agreement (MRA) to which the U.S. is a party. The MRA allows for Coast Guard approvals of certain fire protection equipment and materials issued by other nations that are members of the European Community (EC). This change will reduce manufacturer costs and burdens associated with duplicative testing and evaluation for multiple national approvals.

III. Regulatory History

On January 13, 2014, we published a notice of proposed rulemaking (NPRM) titled "Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment" in the **Federal Register** (79 FR 2254). We received twelve letters consisting of 44 separate comments in response to the NPRM. No public meeting was requested and none was held.

IV. Discussion of Comments and Changes

The Coast Guard received 44 comments in response to the NPRM. These comments were from several maritime organizations, international associations, private companies, and individuals. Eight comments concerned fire alarm and detection systems, eighteen comments concerned fire extinguishers, nine comments concerned other fire protection equipment, and nine comments we classified as general comments. Each comment is discussed below.

A. Comments Concerning Fire Alarm and Detection Systems

1. New Approval Processes for Fire Detection and Alarm Systems

The Coast Guard received six comments from four commenters on the changes to approval processes for fire detection and alarm systems.

Two commenters requested that, in addition to the Coast Guard requiring electrical control units and accessories for fire alarm systems to meet UL 864 "Standards for Control Units and Accessories for Fire Alarm Systems, 2003", the Coast Guard should also require these products to meet FM Global (FM) 3010 "Approval Standard for Fire Alarm Signaling Systems." The Coast Guard disagrees with this request. It is a long-standing Coast Guard policy to harmonize its shipping regulations with voluntary consensus standards whenever possible. UL 864 is a voluntary consensus standard and it reflects the input of a balanced group of contributors (*e.g.*, producers, testing organizations, authorities having jurisdiction, and government) combined with the solicitation of public input. Although FM 3010 is a credible resource, it is a proprietary standard developed in-house by FM to enable its personnel to evaluate alarm systems, and it is not a voluntary consensus standard.

Another commenter noted that UL 864 "Standards for Control Units and Accessories for Fire Alarm Systems, 2003" is a consensus standard and should be the preferred standard when determining the appropriate product certification. The Coast Guard agrees with this comment.

One commenter expressed concern that as MODUs are built and have initial acceptance tests conducted overseas, it may prove difficult for the ship builder and/or facility owner to utilize a specific testing entity as required in 46 CFR 161.002–6(a), Testing Requirements, which states that "[d]evices must be tested and listed for fire service by an accepted independent laboratory, as accepted in accordance with § 159.010 of this subchapter, or by a NRTL as set forth in 29 CFR 1910.7." The Coast Guard disagrees. Certain safety equipment installed or carried on U.S flag MODUs and foreign flag MODUs operating on the U.S. OCS must be type approved by the Coast Guard as set forth in the applicable inspection subchapters of the U.S. shipping regulations. The testing required to obtain these type approvals is the responsibility of the manufacturer of the equipment and is usually done by accepted independent laboratories. Later, when this equipment is installed on the MODU, the installation must be inspected and approved by a classification society and/or Coast Guard inspector. These are two different approvals. Section 161.002 of CFR 46 applies to testing of the equipment for Coast Guard type approval. Under this section, manufacturers seeking type approval of their equipment must have the equipment tested by an independent laboratory accepted by the Coast Guard in accordance with § 159.010 or by an NRTL accepted by the Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.7. This final rule gives the equipment manufacturer the additional option of using an NRTL. These tests are different from the initial acceptance tests of safety equipment after installation on vessels, including MODUs, which are not affected by this provision. Instead, acceptance tests of individual installations of type approved systems on inspected vessels will continue to be carried out by classification societies and/or Coast Guard inspectors.

One commenter endorsed the Coast Guard's proposal to allow the different components of alarm and detection systems to be approved individually under the "device method" in 46 CFR 161.002–19, or continue to be approved collectively under the current "system method" in 46 CFR 161.002–18. The Coast Guard acknowledges this comment.

2. Grandfathering and Compliance Period

The Coast Guard received two comments on grandfathering and the 2½ year compliance period. One commenter stated that the 2½ year period proposed in 46 CFR 76.27–1; 76.27–80; 76.30–1; 76.33–1; 76.35–1, and 161.002–4 for compliance with the new fire alarm and detection system regulations is inadequate, and requested that the Coast Guard consider providing a longer compliance period. The Coast Guard agrees. The Coast Guard is extending the compliance period for the grandfathering of existing fire detection and alarm installations and approvals from 2½ years to five years. This longer compliance period should provide fire alarm and detection system users and manufacturers enough time to comply with the new regulations. In extending the compliance period, the Coast Guard considered that the new fire alarm and detection regulations were proposed in order to harmonize with voluntary consensus standards and not to address a perceived safety deficiency. Similarly, the Coast Guard will extend the period for completing approval programs under the current criteria from 180 days to 1 year, as specified in 46 CFR 161.002–4.

The same commenter found the manner in which the Coast Guard chose to organize the NPRM's discussion of changes on the grandfathering clause and compliance period for the fire alarm and detection regulations to be confusing and requested the time periods be in numbered paragraphs. Upon review of the discussion in the NPRM (see Section V. A. 4., "Grandfathering and 2 and ½ year Compliance Period"), the Coast Guard concurs that the paragraphs in this discussion were confusing and clarifies the discussion of the grandfathering and compliance clauses set forth in 46 CFR 76.27–1, 76.27–80, 76.30–1, 76.33–1, 76.35–1, and 161.002–4 as follows: (1) Existing systems. These existing fire alarm and detection systems (other than certain smoke sampling systems) may be kept and used for the life of the vessel unless and until they are altered. Guidance on what is considered a mere repair versus changes that constitute an altered alarm and detection system is found in 46 CFR 76.27–80(d). Owners and operators are encouraged to contact the local Coast Guard Officer in Charge, Marine Inspection (OCMI) if there is a question on whether a system will be considered altered or repaired. (2) Systems installed during the 5-year compliance period. New systems installed or existing systems altered within five years of the effective date of the final rule will be allowed to use systems meeting the requirements in place just prior to the effective date of the final rule for the life of the vessel unless and until they are altered after the 5-year compliance period. (3) Systems installed after 5-year compliance period. New systems and altered systems installed or altered five years after the effective date of the final rule will have to meet the new regulation requirements and use systems approved under the new approval criteria.

B. Comments Concerning Fire Extinguishers

1. Ratings

The Coast Guard received ten comments on ratings. One commenter agreed with the Coast Guard's action to replace the Coast Guard-unique fire extinguisher rating system with the performance-based fire extinguisher rating system of UL 711, "Standard for Rating and Testing of Fire Extinguishers" referenced in 46 CFR 162.028–2 and 162.039–2. The Coast Guard acknowledges this comment.

In contrast, another commenter questioned the replacement of the existing Coast Guard weight-based fire extinguisher rating system, *circa* 1952, with the UL 711 fire extinguisher rating system. The commenter was concerned that the application and coverage of fire extinguishers for vessel fires will be compromised. This commenter raised five specific issues, which we address separately in the next paragraph. The Coast Guard disagrees that the adoption of the UL 711 rating system will compromise fire safety on vessels. While we agree that the 1952 Coast Guard extinguishing rating system was valid and useful, maintaining a separate rating system is not warranted in light of the general and broad acceptance of the UL 711 rating system, the demonstrated effectiveness of the UL 711 system, and the potential for confusion caused by having a separate rating system for marine use. Moreover, any differences between the two rating systems were taken into account by the Coast Guard in its development of the new requirements for the number, location, size, and type of fire extinguishers that must be carried on vessels, so the same level of fire safety is maintained under the new regulations. For example, see 46 CFR 76.50–10, Table 76.50–10(a).

Turning to the specific issues cited by the commenter, the first issue concerns changes over time in the UL 711 rating system for Class A fire extinguishers, leading to different ratings for the same size extinguishers depending on the year of manufacture. The Coast Guard acknowledges that the UL 711 Class A rating system has changed more than once over the years, whereas the Coast Guard rating system has not. However, such changes may be in response to changes in technology or the end user market and are subject to consensus review. Thus, such changes are the reason the maritime industry will benefit from the incorporation of the consensus-based, voluntary UL 711 standard rather than being a reason not to adopt the standard.

Similarly, the second issue concerns two changes to the UL 711 rating system of Class B fire extinguishers, leading to higher recent ratings for the same size extinguishers. Again, these changes reflect changes in technology and are subject to consensus review; these are not a reason not to incorporate the UL 711 standard.

The third issue concerns the test that is used in the UL 711 standard to rate Class B extinguishers, wherein professional test operators extinguish heptane (a flammable liquid) fires in open, flat and unobstructed test pans. Specifically, the commenter is concerned that this test covers only one fire scenario and that the tests on which the rating is based are too difficult for most novices to accomplish. The Coast Guard acknowledges that the UL 711 Class B fire extinguisher ratings are based on only one fire scenario and that the test results reflect the skill of the professional test operators. However, the UL 711 rating system is an effective way of broadly ranking the effectiveness of various extinguishers on Class B fires in a consistent and repeatable manner, carried out by a professional laboratory. Moreover, the Coast Guard's new rules on the number, location, sizes and types of fire extinguishers required onboard for various hazards take into account the rating process.

The fourth issue concerns some extinguisher standards moving away from numerical ratings for Class B fires and instead specifying minimum agent capacities and flow rates for certain fire scenarios. The commenter cites NFPA 10 as requiring minimum quantities and flow rates for certain hazards. While NFPA 10 does specify quantities and flow rates of agents for certain hazards, it still relies on the fire test standard of UL 711 in its general prescriptions for the size and placement of extinguishers for general fire hazards. Again, the Coast Guard's new rules on the number, location, sizes and types of fire extinguishers required onboard for various hazards take into account the expected capabilities of extinguishers classified according to the fire test standards of UL 711.

The fifth issue concerns the commenter's views that the UL 711 test for electrical conductivity is inadequate because it measures the conductivity across the fire extinguishers' discharge stream and not across a pool of the extinguishing agent, and that use of extinguishers approved under the standard could be dangerous. The Coast Guard disagrees. The Coast Guard believes that the UL 711 test adequately measures electrical conductivity of extinguishing agents, that the extinguishers are safe when used properly, and the Coast Guard is not aware of any casualty analysis demonstrating the inadequacy of the UL 711 conductivity test. Moreover, as a voluntary consensus standard, the UL 711 test has broad acceptance and is almost universally used in domestic residential, municipal and industrial applications to good effect.

Another commenter noted that UL 711 is not a certification standard and therefore, those laboratories referenced would strictly be testing laboratories. The Coast Guard acknowledges this comment and notes that the regulations in question, 46 CFR 162.028–2 and 162.039–2, refer to "approval tests." The commenter added that the appropriate references to the fire extinguisher certification standards are ANSI/UL 8, ANSI/UL 154, ANSI/UL 299, ANSI/UL 626, and ANSI/UL 2129. The Coast Guard acknowledges these designations; however, per guidance from the Office of the Federal Register stating that UL published documents must be incorporated by reference as UL documents, the Coast Guard will not add ''ANSI'' in the title of these documents since they are not ANSI published documents.

The same commenter recommends that the requirements in 46 CFR 162.039–3(b) be revised to be consistent with the UL 8 (Section 6.11), UL 154 (Section 6.10), UL 299 (Section 6.11), UL 626 (Section 6.11), and UL 2129 (Section 6.11) such that semi-portable fire extinguishers are designated based on overall weight of 60 pounds rather than 50 pounds. The Coast Guard is maintaining the weight limit at which fire extinguishers are designated as semi-portable at 50 pounds. The 50-pound weight limit was chosen to harmonize with the 23 kg portable extinguisher limit that is prescribed by the International Code for Fire Safety Systems (''FSS Code''). U.S.-flagged vessels engaged in international trade are required to meet the International Convention for Safety of Life at Sea (''SOLAS'') and FSS Code regulations.

One commenter endorsed the Coast Guard's effort to reduce unnecessary complexity and confusion for fire equipment standards on vessels by providing an efficient approach to regulating fire extinguishers through less complex carriage requirements and incorporation of the UL rating system. The Coast Guard acknowledges this comment.

2. Maintenance Requirements

The Coast Guard received five comments on the new maintenance requirements. One commenter suggested that the Coast Guard identify acceptable training organizations to certify personnel before they are allowed to maintain and recharge fire extinguishers. We disagree. In the Coast Guard's experience, service providers who are licensed and certified in the local communities have proven reliable and there does not appear to be a need to change this.

One commenter endorsed the Coast Guard's action of requiring an annual inspection of portable fire extinguishers by qualified service personnel while allowing the appropriate vessel crew members to perform the required monthly visual inspection of portable fire extinguishers. The Coast Guard acknowledges this comment.

Another commenter suggested that our regulations account for the different fire extinguisher designs, special types of service equipment, and personnel training required to service them. While the Coast Guard acknowledges that different types of fire extinguishers may require different equipment and techniques to service and recharge them, we have relied upon service providers who are licensed and certified by local authorities. This practice has proven to be reliable and there does not appear to be a need to change it.

One commenter expressed concern with the requirements in 33 CFR 145.01 and 46 CFR 107.235 and several other regulations which state that fire extinguisher servicing agencies are required to be certified by the state or local jurisdiction, suggesting that this would be problematic on waters bordered by multiple jurisdictions. The Coast Guard agrees with the commenter. We did not intend to specify any particular jurisdiction but rather want to ensure that the certification is conducted by an appropriate authority having jurisdiction (AHJ) to perform the certifications. The Coast Guard has revised these regulations by changing ''the'' to ''a,'' to state that ''[c]ertification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of cylinders.''

One commenter endorsed requiring qualified service personnel certified by local AHJs to conduct annual inspections of fire extinguishers, while endorsing vessel crew members to perform monthly visual inspections of fire extinguishers. The Coast Guard acknowledges this comment.

3. Spare-Extinguisher Requirements

The Coast Guard received three comments on the new spare-extinguisher requirements. One commenter suggested that the new spare extinguisher requirements must specifically address details of the procedures and equipment for recharging spent fire extinguishers. This comment mentioned three specific issues, which we address in the following paragraph. In general, however, the Coast Guard disagrees that the requirements for spare extinguishers require detailed regulations relating to recharging fire extinguishers. The spare fire extinguisher requirements in 46 CFR 34.50–10(a), 76.50–10(a), 95.50–10(a), 108.495, 169.567(a), and 193.50–10(a) refer to the number of complete and ready-to-use fire extinguisher units that must be carried on a vessel. These regulations do not address the carriage of spare charges for extinguishers; therefore, it is unnecessary to include spare-recharge requirements in these regulations.

Turning to the specific issues cited by this commenter, the first is a suggestion that the spare extinguisher regulations establish which types of fire extinguishers may be recharged and serviced by crews underway. First, as mentioned above, the new spare extinguisher regulations refer to complete units and not spare charges. Second, while the Coast Guard acknowledges that some types of fire extinguishers are more easily recharged than others, there have been no indications that existing practices warrant regulatory change. Instead, the Coast Guard will continue to rely on the AHJs to certify personnel to recharge extinguishers, and to rely on these certified personnel to recharge the extinguishers properly.

The third issue raised is that the number of spare fire extinguishers should take into account the different storage, recharge, service and calibration requirements for the different types of fire extinguishers carried. Under the new regulations, however, required spares must be complete and ready-to-go fire extinguisher units. Any spare recharges that may be carried onboard are surplus to this requirement and need not be addressed in the regulations.

C. Comments Concerning Other Fire Protection Equipment

1. Spanner Wrench Carriage Requirements

The Coast Guard received two comments on the spanner wrench carriage requirements. One commenter agrees with the revisions in 46 CFR 181.310 that will allow 46 CFR subchapter T vessel operators to use two 1½ inch-diameter firehoses at external vessel locations instead of one 2½ inch hose. The Coast Guard acknowledges this comment.

The same commenter agreed with our requirements to install spanner wrenches at all 1½ inch fire hydrants; however, the organization represented by the commenter, expressed concern with the 30-day compliance period upon the publication of this rule. The organization noted that small passenger vessels comprise half of the inspected U.S.-flagged vessel fleet and that information dissemination, purchase, and installation all have an impact on a reasonable response time. When the current rules for 46 CFR Subchapter T small passenger vessels were written, we inadvertently omitted the requirement to have spanner wrenches at all 1½ inch hydrants. The commenter suggests that a more appropriate interval for compliance might be 60 days or the date of the vessel's first annual inspection after this final rule is published, or whichever is later. The Coast Guard agrees with the commenter and will revise the regulations in 46 CFR 118.310 and 181.310 to establish a 180-day compliance period.

2. Use of Non-Metallic Pipe

One commenter agreed with the revisions in 46 CFR 182.720 that will allow 46 CFR subchapter T vessels to use non-metallic piping in non-vital systems per the requirements in 46 CFR 56.60–25(a)(3), as an alternative to those prescribed in subchapter T. The Coast Guard acknowledges this comment.

3. Use of Plastic Pipe

One commenter noted that the requirement in 46 CFR 56.60–25(a)(7) limits the certification of plastic pipe being used for potable water to certain laboratories. It was not our intent to unnecessarily exclude any appropriately qualified independent laboratories. Therefore, the Coast Guard is amending the requirement in 46 CFR 56.60–25(a)(7) to require "[p]ipe that is to be used for potable water must bear the appropriate certification mark of a nationally-recognized, ANSI-accredited third-party certification laboratory" rather than referring to one particular set of laboratories.

4. Sprinkler System Requirements

The Coast Guard received one comment on 46 CFR 76.25–1, "Application." The commenter suggested that in addition to requiring Chapter 25 of NFPA 13, "Standard for the Installation of Sprinkler Systems" (2010 Edition), for the design and installation of sprinkler systems, the Coast Guard should also require sprinkler systems to meet the design and installation requirements found in NFPA 15, "Standard for Water Spray Fixed Systems for Fire Protection," and NFPA 16, "Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems." The Coast Guard disagrees. Chapter 25 of NFPA 13 is specifically directed to the unique requirements of marine, onboard, fixed fire extinguishing systems. In contrast, neither NFPA 15 nor NFPA 16 has such specific sections dealing with specifically address marine installations. Although most shore side fire protection engineering principles are adaptable to marine use, nevertheless the design and operating environment of ships is different enough to warrant special consideration. For instance, marine layout and configuration is different from buildings, and the marine environment is harsher due to salt air, salt water, vibrations and rough seas. Thus, fire extinguishing systems must be adapted to this environment.

5. Carbon Dioxide Fire Extinguishing System Requirements

The Coast Guard received one comment on 46 CFR 147.65, "Carbon dioxide and Halon fire extinguishing systems." The commenter suggested that the Coast Guard extend the visual inspection requirements of Halon 1301 fire extinguishing systems to clean agent fire extinguishing systems. The Coast Guard disagrees. Halon 1301 fire extinguishing systems no longer need to be periodically emptied, hydrostatically tested, and refilled. In part, this is because the international ban on the production of Halon 1301 requires carefully controlled reclamation and collection of Halon 1301, making the emptying and refilling of Halon 1301 cylinders expensive and impractical for vessel owners. Instead, this testing will be replaced with a visual inspection. This change was made to avoid the risk of accidentally releasing Halon, an ozone-depleting agent that is very harmful to the atmosphere. As an alternative, halocarbon clean agents may be visually inspected per the existing regulations in 46 CFR 147.67. However, the hydrostatic testing method is being kept for the inert gas clean agents, in keeping with the recommendations of NFPA 2001, "Clean Agent Fire Extinguishing Systems" (2012), which is a consensus standard.

6. Portable Foam Applicators

One commenter agreed with the Coast Guard's action to allow the use of UL 162, "Standard for Foam Equipment and Liquid Concentrates," (Seventh Edition) for the type approval of portable foam applicators found in 46 CFR 162.163–3 and 162.163.–4. The Coast Guard acknowledges this comment.

7. Independent Laboratories

Two commenters endorsed the standards in 46 CFR 159.010–3 for the acceptance of independent laboratories. These comments are acknowledged.

D. General Comments

The Coast Guard received nine comments on the NPRM that we have categorized as general comments. Below we discuss the comments and our responses.

1. Testing Laboratories

One commenter noted that the list of OSHA nationally recognized testing laboratories referenced in "Table 46 CFR 34.50–10(a) Portable and Semi-Portable Extinguishers" footnote 13 should have included UL. The Coast Guard acknowledges that UL is listed as an OSHA NRTL (see *https://www.osha.gov/dts/otpca/nrtl/nrtllist.html*). No change in footnote 13 is required in response to this correction since the footnote only refers to OSHA NRTLs in general, and does not list them.

2. Incorporation by Reference

One commenter endorsed the Coast Guard's incorporation by reference of UL 8 "Standard for Foam Fire Extinguishers," UL 154 "Standard for Safety for Carbon-Dioxide Fire Extinguishers," UL 299 "Standard for Safety for Dry Chemical Fire Extinguishers," UL 626 "Standard for Safety for Water Fire Extinguishers" and UL 2129 "Standard for Halocarbon Agent Fire Extinguishers" for the testing and labeling of fire extinguishers in 46 CFR 162.028–2 and 162.039–2. The Coast Guard acknowledges this comment.

One commenter advised us that the title to UL 626 was changed to "Standard for Safety for Water Fire Extinguishers." In response, the Coast Guard has amended the title of UL 626 to reflect the correct name of the standard.

3. Acceptance of Equipment Approved to Solas Requirements as Equivalent to CFR Requirements

One commenter supported the Coast Guard's recognition and acceptance of certain equipment, materials, and components approved under SOLAS. The Coast Guard acknowledges this comment. However, the commenter requested to know how industry could alleviate any possible conflicts that may exist in other regulations and in published Navigation and Vessel Inspection Circulars with regard to the SOLAS/Coast Guard equivalency provisions referenced in the NPRM (*e.g.,* 33 CFR 140.15 (b), which requires specific Coast Guard type approval). The Coast Guard does not detect a conflict. Where Coast Guard regulations require type approval of equipment they clearly state such approval shall be made by the Commandant of the Coast Guard. This is in accord with SOLAS, which has regulations that call for approved equipment, but leaves the approval of the equipment to the Administration, which in the United States means the Commandant, for vessels and MODUs under the United States' flag. The new rules simplify which standards must be used for the approval of materials and equipment for use on domestic vessels by allowing these vessels an option to have structural fire protection in accordance with SOLAS and applicable FTP Code provisions, and by adopting FTP Code and FSS Code provisions for certain types of fire extinguishing and detecting equipment. This is not a blanket adoption of these international standards for the approval of all materials and equipment on domestic vessels. However, the applicable regulations must be consulted for specific situations, especially if the SOLAS option for structural fire protection is not selected. Interested parties also are referred to the applicable regulations, and NVIC 06–05, Unified Interpretations of SOLAS Chapter II–2, the FSS Code, the FTP Code and related fire test procedures, and NVIC 9–97, CH1, Guide to Structural Fire Protection.

4. Harmonization

The Coast Guard received four comments regarding harmonization with national and/or international standards.

While endorsing the new fire extinguisher regulations, one commenter expressed concern about the fire protection, detection, and extinguishing equipment provisions for harmonizing Coast Guard requirements with international standards because they are so complex that it is difficult to determine exactly how they impact towboats that operate only in domestic inland waters. If these standards do apply to such vessels, the commenter requested that the Coast Guard extend the comment period and hold public meetings to better explore the impacts of these revisions on inland towing vessels to ensure that international standards are not automatically applied to inland U.S. mariners and vessel operations since their operating environment is drastically different. The commenter added that it seems as though there are no direct impacts to the domestic towboat industry; however, the commenter urged the Coast Guard to ensure that any future considerations to apply international standards to domestic-only vessels be done only after discussions with domestic inland towing vessel operators. The Coast Guard acknowledges the commenter's concerns. Where international SOLAS or consensus standards apply to domestic vessels in the rule, these standards provide flexibility by allowing for regulatory alternatives to the existing regulations and do not change the existing domestic requirements. For this reason, neither an extension of the comment period nor a public meeting on this subject is needed. One commenter endorsed the Coast Guard's harmonization of standards for fire protection, detection, and extinguishing equipment. This comment is acknowledged.

Two commenters supported the Coast Guard's objective of harmonizing fire protection requirements; however, consistent with that objective and the Coast Guard's commitment to a "one shelf, one standard policy," the commenter's recommended that in the interest of safety and regulatory efficiency, the Coast Guard and the Department of Interior Bureau of Safety and Environmental Enforcement (BSEE) should promulgate joint fire protection requirements for OCS facilities. Both the Coast Guard and the BSEE have statutory authority for regulation of MODUs and facilities on the OCS. Generally, the Coast Guard regulates the MODUs as inspected and certificated vessels, while the BSEE regulates the MODUs when attached and engaging in drilling operations. Accordingly, the Coast Guard and the BSEE have apportioned the responsibilities for the regulation of the various systems associated with MODUs between themselves as the lead agencies. Under this apportionment, the Coast Guard is responsible for fire protection on MODUs except for the drill floor and related areas. None of the regulations in the current rulemaking affect the drill floor and related areas, therefore the Coast Guard has determined that this final rule does not conflict with any BSEE regulations. Moreover, the Coast Guard and the BSEE systematically coordinate so as to promulgate regulations that foster fire safety, among other objectives, in an efficient manner.

5. Preemption

One commenter agrees with the revisions to existing regulations and the issuance of new regulations that preempt state and local regulation with regard to fire protection, detection, extinguishing equipment, and materials on several types of vessels. These vessels include inspected vessels, uninspected vessels, uninspected commercial fishing vessels, towing vessels, deepwater ports, MODUs, and OCS facilities. This commenter urged the Coast Guard to add specific regulatory language stating that the requirements in 46 CFR subchapters H, K, and T completely preempt state and local regulations. The Coast Guard acknowledges this comment, and refers to the preemption section of this preamble below which is consistent with applicable law.

V. Summary of Changes From NPRM

Changes made in the final rule in response to comments are discussed in detail above in Section IV, "Discussion of Comments and Changes". Additional changes are discussed individually below.

The Coast Guard has added a comma to sections 46 CFR 76.10–10(b)(2) and 95.10–10(b)(2) to make clear that one wye connection supplies two 1½ inch hoses. Section 193.10–10(b) of Title 46 of the CFR already had this comma.

In 46 CFR 76.10–10(d), the existing requirement that there be enough hydrants such that two hose streams reach all parts of the vessel accessible to passengers and crew other than machinery and cargo spaces was inadvertently deleted. We are restoring this two-hose-stream requirement in the final rule.

In the NPRM, the Coast Guard proposed that the number of spare fire extinguishers that must be carried on domestic vessels be reduced from 50 percent of the number of extinguishers required to as low as 10 percent. We also sought specific comments on the appropriate percentage of spares necessary, along with a brief explanation. Because we received no specific comments or suggested percentages of spares in response, we are setting the percentage of spares required at 10 percent in the final rule based on the rationale set forth in the NPRM that a reduction in the number of spares required is warranted by the enhanced maintenance provided by the new regulations and by the ease in the ability to source spares when needed. The tables that specify the 10 percent spare requirement are 46 CFR 34.50–10(a), 76.50–10(a), 95.50–10(a), and 108.495. Tables to 46 CFR 132.220 and 193.50–10(a) are already set at the 10 percent requirement rate. Other fire extinguisher tables do not reference spares, so they remain unchanged.

Spacing and indentation have been changed for the "Spares" row in the required fire extinguishers tables in order to clarify that the "Spares" row is a separate category and not part of the category immediately above it. This change was made to the tables to 46 CFR 76.50–10(a), 95.50–10(a), 108.495, 132.220, and 193.50–10(a). Table to 46 CFR 34.50–10(a) was already correctly spaced.

In response to comments, the Coast Guard revised 46 CFR 56.60–25(7) to allow all nationally-recognized, ANSI-accredited, third-party certification laboratories to be used to certify plastic pipe carrying potable water, rather than specific laboratories.

In response to comments, the Coast Guard revised the following sections to clarify that any appropriate AHJ can be used: See 33 CFR 145.01(b)(1), and 149.408(b); and 46 CFR 25.30–10(b), 31.10–18(a)(1), 91.25–20(a)(1)(i), 107.235(a)(1), 169.247(a)(1)(i), 176.810(b)(1)(i), and 189.25–20(a)(1)(i).

In response to comments specifically requesting a change in the compliance period, we revised the following sections to extend the compliance period for new and altered detection and alarm systems from 2½ years to 5 years: 46 CFR 76.27–1, 76.27–80, 76.30–1, 76–33–1(a) & (b), and 76.35–1(b). Furthermore, the Coast Guard revised 46 CFR 161.002–4(b) and (c) to extend the allowable period for obtaining approvals of detection and alarm systems based on the provisions in place prior to the effective date of this rule.

The Coast Guard revised sections 46 CFR 118.310 and 181.310 to extend the compliance period for obtaining 1½ inch spanner wrenches from 30 to 180 days from date of publication of the final rule in response to comments.

As a result of one comment, the Coast Guard revised the following sections to correct the name of UL 626 to "Standard for Safety for Water Fire Extinguishers:" 46 CFR 162.028–1(b)(4), 162.028–3(a)(4), 162.039–1(c)(4), and 162.039–3(a)(4).

To harmonize this regulation with a separate and concurrent rulemaking for commercial towing vessels (see the Inspection of Towing Vessels notice of proposed rulemaking (76 FR 49976, August 11, 2011)), the Coast Guard deleted requirements regarding excess non-approved fire detection systems onboard uninspected towing vessels in proposed 46 CFR 27.203(b)(2) and 27.203(b)(3), respectively. Specifically, the requirements for installation of these systems to conform to 46 CFR chapter I, subchapter J, (Electrical Engineering) and for the Coast Guard to review wiring plans were removed because they exceed those found in the towing vessels proposed rulemaking. Proposed § 27.203(b)(4) was renumbered to § 27.203(b)(2). The Coast Guard does not require these excess systems to be inspected aboard uninspected vessels therefore the requirement for testing and inspection was removed from new § 27.203(b)(2) in the final rule.

Commercial fishing vessels are also uninspected. Proposed 46 CFR 28.155(a)(2) and 28.155(a)(3), mirrored the proposed §§ 27.203(b)(2) and 27.203(b)(3) above and were likewise removed to maintain consistency with uninspected towing vessels. Additionally, proposed § 28.155(a)(4) was renumbered to § 28.155(a)(2), and the statement requiring testing and inspection was removed from new § 28.155(a)(2) for the same reason as discussed for proposed § 27.203(b)(4) above.

The Coast Guard has the authority to test and inspect any and all systems required under the various inspection subchapters in both Title 33 and Title 46 CFR. Superfluous proposed requirements in 33 CFR 149.404(b)(4); and 46 CFR 34.01–5(b)(4), 76.01–5(b)(4), 95.01–5(b)(4), 118.120(b)(4), 132.340(b)(4), 167.45–30(b)(4), 181.120(b)(4), and 193.01–5(b)(4) were subsequently removed in this final rule.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. A final Regulatory Assessment follows.

As previously noted in Section IV, "Discussion of Comments and Changes", we received 44 comments in response to the NPRM. These comments were from several maritime organizations, international associations, private companies, and individuals. Eight comments concerned fire alarm and detection systems, 18 comments concerned fire extinguishers, nine comments concerned other fire protection equipment, and nine comments we classified as general comments. We received no comments regarding the regulatory analysis (RA) performed for the NPRM. Therefore, we adopt the methodology and assumptions for the costs and benefits from the NPRM as final. However, we have updated the analysis with the current affected population, wage rates, training costs, and equipment cost estimates as reflected in the revised analysis below. For brevity, we omit all items which we previously determined will impose no new burden on industry and are not expected to result in additional costs. For a detailed discussion refer to the January 13, 2014 NPRM publication entitled, "Harmonization of Standards for Fire Protection, Detection, and Extinguishing Equipment" in the **Federal Register** (79 FR 2254). The table below summarizes the elements in the analysis that were updated between the NPRM and the final rule.

TABLE 2—SUMMARY OF CHANGES BETWEEN NPRM AND FINAL RULE

Category	Description	Rationale
Affected Population	Updated estimates for the affected population of vessels, offshore facilities, MODUs, and recreational vessels.	Updated the 2012 data pull with 2013 data to reflect the most current full year estimates in MISLE and Recreational Boating Statistics.
Wages	Loaded wage for BLS occupation code 53–5011, Sailors and Marine Oilers.	Updated the 2012 BLS loaded wage estimates with 2013 estimates.
Wages	Loaded wage for BLS occupation code 53–5021, Captains, Mates, and Pilots of Water Vessels.	Updated the 2012 BLS loaded wage estimates with 2013 estimates.
Compliance Period	Compliance period proposed in 46 CFR 76.27–1; 76.27–80; 76.30–1; 76.33–1; 76.35–1, and 161.002–4 for new fire alarm and detection system increased from 2½-years to 5 years.	Facilitate harmonizing with voluntary consensus standards without imposing additional costs on industry, lining up with our initial assessment.
Compliance Period	Compliance period for carriage of spanner wrenches in 46 CFR 181.310 increased from 30 days following publication of the final rule to 180 days.	Response to public comment. No impact on initial assessment.

This RA provides an evaluation of the economic impacts associated with this final rule. The table which follows provides a summary of the final rule costs and benefits.

TABLE 3—SUMMARY OF THE IMPACTS OF THE FINAL RULE

Category	Summary
Affected Population	Affected population varies by CFR title and subchapter, see Table 4 below.
Total and Annualized Costs (7 percent discount rate).	$1.1 million total costs; $156,588 annualized costs.
Unquantified Benefits	• Harmonization and compliance with international standards; • Harmonization with industry consensus standards; • Increased compliance choices, reducing regulatory compliance burdens; • Reduction in risk from potentially toxic or flammable gases no longer being routed into human-occupied spaces; and, • Increased safety through the availability of tools and equipment during emergency situations.

The final rule contains provisions amending the CFR requirements for fire protection equipment, materials, components, and systems. In the NPRM, Section V, "Discussion of Proposed Rule", laid out the proposed changes and the rationale for those changes. The provisions fell into two broad categories: (1) Provisions that harmonize Coast Guard regulations with national and international industry consensus standards; and (2) provisions that correct or adjust existing regulations referring to specific issues or equipment. Most of the provisions, both harmonizing and non-harmonizing, were not expected to impose additional costs upon the industry. However, we identified three provisions which we expect to have a cost impact on industry:

(1) Sample extraction type smoke detection systems requirements, which specify that all existing vessels using sample extraction fire detection methods route the gases outside the vessel and install a sensing device that will trigger a visual and audible alarm in the bridge;

(2) Fire extinguisher carriage and maintenance requirements, which eliminate the current Coast Guard-specific rating system for fire extinguisher classification, and specify that individuals performing annual inspection, maintenance, or necessary recharging of fire extinguishers must be certified in accordance with the standards of NFPA 10; and,

(3) Spanner wrench carriage requirements for small passenger vessels, which specify that all subchapter K and T vessels carry a spanner wrench for each 1½ inch diameter hose installation.

Based on these elements, Table 4 shows the total affected population and the numbers of vessels, offshore facilities, and MODUs organized by CFR subchapter. For each of the three provisions noted before, we identified the affected population and the respective economic impacts.

TABLE 4—AFFECTED POPULATION

CFR Title	Subchapter	Topic	Population
33	N	Outer Continental Shelf Facilities	8,573
33	NN	Deepwater Ports	56
46	C	Uninspected Vessels	11,232,060
		Towing Vessels	7,961
		Uninspected Vessels	86,370
		Fishing Vessels	34,723
		Recreational Vessels *	11,103,006
46	D	Tank Vessels	5,362
46	F	Marine Engineering	n/a
46	H	Passenger Vessels	308
46	I	Cargo and Miscellaneous Vessels	1,750
46	I–A	Mobile Offshore Drilling Units (MODU)	259
46	J	Electrical Engineering	n/a
46	K	Small Passenger Vessels Carrying more than 150 Passengers or with Overnight Accommodations for more than 49 Passengers.	591
46	L	Offshore Supply Vessels	1,548
46	N	Dangerous Cargoes	42
46	Q	Equipment, Construction and Material Specifications and Approval.	n/a
46	R	Nautical Schools	127
46	T	Small Passenger Vessels (Under 100 Gross Tons)	11,157
46	U	Oceanographic Research Vessels	888

* Mechanically propelled recreational vessels

Source: USCG MISLE database for all non-recreational populations. Recreational vessel population is from COMDTPUB P16754.27—2013 Recreational Boating Statistics, Table 37, available at *http://www.uscgboating.org/assets/1/AssetManager/2013RecBoatingStats.pdf.*

Costs

In the following discussion, we describe the impacts for each of the three categories for the provisions listed in the previous paragraphs. As previously noted, we received no comments regarding the RA we performed for the NPRM. We therefore adopt the methodology and cost assumptions as final. However, we have updated this section using 2014 population estimates, wage rates, training costs, and equipment costs.

(1) Sample Extraction Type Smoke Detection Systems

This requirement implements changes regarding the ventilation of potentially toxic or flammable gases. Previous regulations allowed systems to route these potentially toxic or flammable gases or smoke from the cargo hold to the bridge so that a watchstander could detect a problem by smell. International consensus standards consider this practice unacceptably dangerous, and SOLAS has required routing of sampled gases out of manned spaces since the 1978 protocol, which went into effect May 25, 1980. The new provisions, found in 46 CFR 76.33, require that existing vessels using sample extraction fire detection methods route the gases outside the vessel and install a sensing device that will trigger a visual and audible alarm on the bridge. Existing vessels will have 5 years in which to comply with this provision. Currently, all U.S. vessels that are SOLAS-certificated and built after May 25, 1980, are in compliance with this provision. According to the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) database which documents the types of fire detection systems installed on vessels, the affected population for this provision includes three vessels: two active SOLAS vessels built before May 25, 1980, and one active non-SOLAS vessel.

Information from the U.S. Bureau of Labor Statistics (BLS) indicates that the loaded mean hourly labor cost (wages and benefits) is $28 for Sailors and Marine Oilers (BLS occupation code 53–5011[1]). This loaded wage rate includes the hourly base wage rates of $19.56 multiplied by a load factor of 1.43 (rounded).[2] We estimate the cost per vessel to comply with this provision at $1,243. This includes the installation of a ventilation fan (average catalogue price $375) and a fixed gas detector (average price $700) and the cost of installation (6 hours at the equivalent wage of a crewmember $28.00 per hour × 6 hours = $168). We assume that one of the affected vessels will comply each year (given 5 years to meet compliance) beginning in the third year after publication of this final rule.[3]

Over the 10-year period of analysis, we estimate the total present value costs of this provision to be about $2,849 and $3,314 discounted at 7 and 3 percent, respectively. We estimate the annualized costs to be approximately $695 and $724 discounted at 7 and 3 percent, respectively. Table 5 summarizes the costs of this provision to industry.

TABLE 5—REQUIREMENT FOR ROUTING POTENTIALLY TOXIC OR FLAMMABLE GASES OR SMOKE

Year(s)	Affected vessels	Avg. cost per vessel	Total cost all vessels		
			Undiscounted	7 percent discount	3 percent discount
1	0	$1,243	$0	$0	$0
2	0	1,243	0	0	0
3	1	1,243	1,243	1,015	1,138
4	1	1,243	1,243	948	1,104
5	1	1,243	1,243	886	1,072
6–10	0	1,243	0	0	0
Totals *	3	—	3,729	2,849	3,314
Annualized				695	724

* Totals may not sum due to rounding

(2) Fire Extinguishers

This rule makes parallel changes in each of the subchapters which require vessels, offshore facilities, and deepwater ports to carry Coast Guard approved portable or semi-portable fire extinguishers.

Ratings: UL 711 and NFPA 10:2010

These provisions apply to all the affected populations carrying portable and semi-portable fire extinguishers listed in Table 4, including recreational vessels. These provisions eliminate the current Coast Guard-specific rating system for fire extinguisher classifications, in favor of the classifications specified in the relevant national industry standards. The Coast Guard rating system relied on a prescriptive weight-based standard for the retardant, while the modern industry standards, UL 711 and NFPA 10, are performance-based. Currently, all Coast Guard-approved fire extinguishers are rated by their testing laboratories using both the Coast Guard and the NFPA 10 and UL 711 rating systems. Sections 162.028–4 and 162.039–4 of Title 46 of the CFR require labeling of approved extinguishers with specific language which includes the Coast Guard rating of the extinguisher. As a result, the Coast Guard rating system was a duplicative and confusing requirement that was inconsistent with current industry standards.

With this change, manufacturers of fire extinguishers no longer have to label their extinguishers with the Coast Guard rating. Extinguisher labeling will remain consistent with current industry formats and styles, and manufacturers will not need to redesign their current labels. This simplifies labeling requirements for manufacturers and limits confusion for purchasers of fire extinguishers for marine use. Currently, all fire extinguishers with Coast Guard-specific approval are marked with a UL rating. Therefore, 46 CFR 162.028–4 and 162.039–4 will no longer require labeling of approved extinguishers with Coast Guard rating language. The removal of these requirements eliminates confusion and has no impact on the approval procedure. We anticipate that manufacturers will continue using their current supply of labels and will only remove the Coast Guard-specific rating information when they order new labels. Industry therefore will not incur any additional expense from this requirement.

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[1] *http://www.bls.gov/oes/2013/may/oes535011.htm.*

[2] Load factor is determined by dividing the reported total average compensation for all private industry workers of $30.11 per hour worked as reported in June, 2014 by the wages and salaries per hour worked of $21.02. "Table 9. Private industry workers, by major occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2014," available at: *http://www.bls.gov/ncs/ect/sp/ececqrtn.txt.*

[3] We anticipate that vessel owners will use the first two years, after this rule goes into effect, for planning purposes to schedule for upgrading to the new requirement.

The changes also include adjusting the current carriage requirements for fire extinguishers found in each subchapter that are currently based on the Coast Guard ratings (example: B–II) to an equivalent requirement that is based on the NFPA 10 and UL 711 ratings (example: 20–B). However, as previously noted in the NPRM, section "*V.* Discussion of Proposed Rule", we established close correlation between Coast Guard ratings and the NFPA 10 and UL 711 ratings, so that the number and relative size of extinguishers does not change. In some cases, however, a slightly larger or smaller extinguisher may be required.

This rule does not require existing vessels to replace serviceable portable and semi-portable fire extinguishers as long as the equipment is properly maintained. When equipment is replaced, replacement fire extinguishers will have to meet the requirements of this rule. New vessels, constructed after the publication of the final rule, are required to be equipped with extinguishers that conform to the new requirements.

Whenever they become unserviceable, all portable and small semi-portable fire extinguishers will require replacement with UL-rated extinguishers. The examination of marine casualty reports from the MISLE database found positive correlations in extinguisher performance between the Coast Guard weight-based standard and the UL performance standard. The prices of extinguishers obtained from industry catalogues indicate there is no differential in prices between extinguishers approved under the previous Coast Guard standard and comparable extinguishers rated according to the UL standards. For this reason, we do not expect these provisions relating to fire extinguishers in non-machinery spaces to result in any additional cost to industry.

The provisions requiring UL class fire extinguishers will affect certain vessels using large semi-portable CO_2 extinguishers (class B–IV and B–V). Extinguishers of this size are required in certain machinery spaces of vessels described under the different subchapters as shown in Table 4. The Coast Guard's previous weight-based rating system allowed CO_2 extinguishers to be used where larger semi-portable extinguishers were required. However, CO_2 extinguishers cannot meet the UL performance standards to receive a sufficient rating to be considered equivalent to class B–IV and B–V extinguishers under those standards, therefore semi-portable CO_2 extinguishers will no longer be permitted to be used in these circumstances. However, as with all other extinguishers, existing vessels do not have to replace their currently operational extinguishers and may continue to use these extinguishers in machinery spaces until they become unserviceable, when they will have to be replaced with extinguishers of comparable classification under the UL rating scale. Vessels using CO_2 based extinguishers will be required to replace their semi-portable CO_2 extinguisher with an extinguisher that uses another extinguishing agent.

To determine if there is a cost differential between the current Coast Guard-approved CO_2 semi-portable fire extinguishers and the comparable UL rated fire extinguishers, the Coast Guard Lifesaving and Fire Safety Division (CG–ENG–4) examined the catalogue pricing of B–V extinguishers that use other fire-retardant agents. The average price of the CO_2 based B–V extinguisher is approximately $5,000, whereas the B–V extinguishers using other agents range in price from $1,200 to $2,000. This cost differential will result in a net savings[4] for all vessels that replace these larger CO_2 extinguishers as we will not require replacement ahead of the normal replacement schedule.

Maintenance: NFPA 10: 2010

These provisions require that individuals performing the annual inspection, maintenance, and necessary recharging of fire extinguishers be certified in accordance with the standards of NFPA 10. Currently, all Coast Guard approved portable fire extinguishers have language on the label stating that the extinguisher is to be inspected and maintained in accordance with NFPA 10. The NFPA 10 requirements are consistent with long-standing industry standard practices in the U.S., both shoreside and marine, and refer to the inspection and maintenance of fire extinguishers. We do not collect or maintain records of personnel who are currently NFPA 10 certified, so we estimated compliance costs below based on our best available information.

Non-rechargeable (non-refillable) fire extinguishers are replaceable units that are expected to require little or no maintenance; after one use or a maximum service life of 12 years, they are replaced. For these extinguishers, all inspections (monthly and annual) and maintenance can continue to be done by owners, operators or designated crewmembers. Uninspected vessels, including recreational vessels, generally carry these types of extinguishers and are therefore not expected to be subject to any additional costs due to these provisions.

The Coast Guard is not requiring that the vessel owners, operators, or designated crewmembers performing monthly inspections and annual maintenance of rechargeable fire extinguishers be NFPA 10 certified. NFPA 10 requires that a "certified" person perform all annual maintenance of rechargeable extinguishers. Under this rule, monthly inspections can continue to be performed by the owner, operator or a designated crewmember. For annual maintenance required by this rule carried out by persons certified under NFPA 10, the Coast Guard will accept the certification or licensing of a fire extinguisher servicing company according to NFPA 10, granted by an appropriate state or local AHJ for servicing and maintenance.

The Coast Guard's MISLE database contains records on approximately 114,395 fire extinguishers on 17,228 U.S.-flagged vessels which may be affected by these provisions. We do not have information as to which of these extinguishers are disposable and which are rechargeable; for the cost analysis we assumed that all of the extinguishers are rechargeable. We also estimated that more than 90 percent[5] of inspected vessels currently use private servicing companies (which are already in compliance with NFPA 10) in lieu of doing their own annual maintenance, and are therefore not expected to incur any additional costs due to these provisions.

The costs associated with these provisions include the certification costs for owner/operators who wish to continue performing annual maintenance according to NFPA 10 specifications. We estimate that 10 percent or 1,723 vessels are currently not using a private servicing company to maintain their extinguishers. We, therefore, assume that a designated individual from each of these vessels will continue to perform annual maintenance on their extinguishers and will therefore need to obtain certification. Table 6 summarizes the population of vessels and fire extinguishers, as well as the average extinguisher count per vessel.

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[4] We are unable to provide a cost estimate for the savings that vessels may incur from replacing CO_2 extinguishers, because there is no way of knowing the exact number of CO_2 extinguishers being carried on vessels or the rate of future replacements.

[5] The 90 percent is an estimate provided by subject matter experts from Coast Guard's Lifesaving& Fire Safety Division, Office of Design & Engineering Standards based on input from field marine inspectors.

TABLE 6—AFFECTED POPULATION FOR VESSELS CHOOSING CERTIFICATION

CFR Subchapter	Existing population		Affected population (10 percent of existing)		Average per vessel
	Vessels	Extinguishers	Vessels	Extinguishers	
D—Tank Vessels	3,261	12,715	326	1,272	3.90
H—Passenger Vessels	278	8,282	28	828	29.79
I—Cargo and misc. Vessels	1,609	30,674	161	3,067	19.06
I-A—MODU	81	4,222	8	422	52.12
K—Small Passenger Carrying 150+ PAX or 49+ Overnight	455	3,646	46	365	8.01
L—Offshore Supply Vessels	563	11,881	56	1,188	21.10
N—Dangerous Cargoes (Dry Bulk)	44	323	4	32	7.34
R—Nautical Schools	44	865	4	87	19.66
T—Small Passenger Vessels (<100 Gross Tons)	10,354	38,286	1,035	3,829	3.70
U—Oceanographic Vessels	75	1,900	8	190	25.33
Unspecified	464	1,601	46	160	3.45
Totals *	17,228	114,395	1,722	11,440	6.64

* Totals may not sum due to rounding.

NFPA 10 certification can be obtained by either taking an online examination that lasts 2½ hours, or by attending an 8-hour seminar concluding with an examination. Upon successful completion, a certificate is awarded which will be valid for three years. We assume that individuals currently servicing fire extinguishers are familiar with proper maintenance methods and any necessary training prior to the exam will be accomplished through on-the-job training. We also assume that owners and operators will choose the least-costly and time-consuming means of obtaining certification. Therefore, we assume that certification will be obtained using the online method. Based on an online price quote from Fire Protection Certification Ltd,[6] we estimate the cost for NFPA 10 certification using the online method of certification to be $139 per course.[7]

As previously discussed, information from the BLS indicates that the loaded mean hourly labor cost (wages and benefits) is $28 (rounded) for crew members (BLS occupation code 53–5011—Sailors and Marine Oilers). This loaded wage rate includes the hourly base wage rates of $19.56 multiplied by a load factor of 1.43. We assume one crew member per vessel will be certified. We also anticipate that in the initial year of this rule, all vessels performing their own maintenance will have a crewmember certified. Thereafter, we anticipate that ⅓ of the affected population will have one crewmember certified each year.[8] Certification through online examination will cost approximately $209 per mariner ($139 + (2.5 hrs × $28/hr)). The annual cost of online examination for 10 percent of the affected population is approximately $360,000 (undiscounted) for the first year and approximately $120,000 (undiscounted) for the recurring years.

Additionally, we anticipated that industry will incur a cost burden for recordkeeping of crew members' certifications. Vessel owners and operators must have crew members' certificates available when asked by an inspector to verify crew member training. We assume that a person in charge of the vessel will spend 2 minutes filing the certificate and 2 minutes to produce the certificate upon request. Based on information from the BLS, we estimate a loaded wage rate[9] of $52 (rounded) and an estimated annual cost of this requirement to be $3.47 per vessel ($52 × 4 minutes ÷ 60 min/hr). We have included a detailed Paperwork Reduction Analysis in the collection of information section of the RA.

Over the 10-year period of analysis, we estimate the present total value cost at approximately $1.08 million discounted at 7 percent with an annualized cost of approximately $154,000 discounted at 7 percent. Table 7 summarizes the cost impact of this rule on industry.

TABLE 7—CERTIFICATION COSTS FOR NFPA 10

Year	Certifications per year	Undiscounted costs		Total discounted costs	
		Cost of online examination	Total with recordkeeping costs	Online examination (7 percent)	Online examination (3 percent)
1	1,722	$359,898	$365,873	$341,938	$355,217

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[6] *http://www.fpcltd.com/index.html.*

[7] *http://train.fpcltd.com/.*

[8] The ⅓ certification estimate is based on vessels having employee turnover and/or crewmember needing to re-certify every three years. In this analysis we assume that for years 2 and 3, ⅓ of the affected population will be required to get certified due to an equal number of crew turnover or change in job status that would require new certification of another crewmember. Thereafter, we assume that the number of crewmember turnover, change of job status and re-certification would equate to ⅓ of the affected population per year.

[9] Mean hourly wage of $36.34 for BLS occupation code 53–5021, Captains, Mates, and Pilots of Water Vessels (*http://www.bls.gov/oes/2012/may/oes535021.htm*), multiplied by a load factor of 1.43.

TABLE 7—CERTIFICATION COSTS FOR NFPA 10—Continued

Year	Certifications per year	Undiscounted costs		Total discounted costs	
		Cost of online examination	Total with recordkeeping costs	Online examination (7 percent)	Online examination (3 percent)
2	574	119,966	121,958	106,523	114,957
3	574	119,966	121,958	99,554	111,609
4	574	119,966	121,958	93,041	108,358
5	574	119,966	121,958	86,954	105,202
6	574	119,966	121,958	81,266	102,138
7	574	119,966	121,958	75,949	99,163
8	574	119,966	121,958	70,981	96,275
9	574	119,966	121,958	66,337	93,470
10	574	119,966	121,958	61,997	90,748
Totals*		1,439,592	1,463,493	1,084,539	1,277,136
Annualized				154,414	149,719

*Totals may not sum due to rounding.

(3) Spanner Wrench Carriage Requirement for Small Passenger Vessels

These provisions require that all subchapter K and T vessels carry a spanner wrench for each 1½ inch diameter hose installation. According to the Coast Guard's MISLE database, there are approximately 2,613 subchapter K and T vessels with 1½ inch diameter hose installations. The total number of 1½ inch diameter hose installations onboard the vessels is 6,645, for an average of approximately 2.5 hose installations per vessel. The individual catalogue prices of spanner wrenches indicate a cost of $15 to $25 each.

Table 8 summarizes the vessel population and the cost of the potential distribution of spanner wrenches per vessel costs depending on the number of 1½ inch diameter hose installations. Coast Guard marine inspectors report that over 90 percent of subchapter K and T vessels already have the necessary spanner wrenches. We therefore assume that 261 vessels, or 10 percent of vessels in the affected population, will need to purchase spanner wrenches based on the number of 1½ inch diameter hose installations on board.

TABLE 8—SUMMARY OF VESSEL POPULATION AND POTENTIAL PER-VESSEL COSTS

Number of 1½″-hose installations	Total vessel count	10 Percent of affected vessels	Costs per vessel	
			Low	High
1	645	65	$15	$25
2	1,295	130	30	50
3	267	27	45	75
4	158	16	60	100
5	125	13	75	125
6–9	81	8	90–135	150–225
10–20	33	3	150–300	250–500
>20	9	1	300–$750	525–$1,250
Total*	2,613	261		

Table 9 summarizes the total costs of this requirement to industry. Although we increased the compliance period from 30 days to 180 days following the publication of the rule, we still assume the costs of this requirement to be incurred in the first year. We estimated costs for this provision based on the average cost range of spanner wrenches to be $20 per spanner wrench. Based on information from MISLE, there are approximately 6,645 1½ inch diameter hose installations onboard 2,613 vessels for an average of 2.5 (rounded) 1½ inch diameter hose installations per vessel. Based on an average of 2.5 hose installations per vessel (as noted above, for cost calculation purposes in this analysis we use an average cost for the wrench of $20), the average per vessel cost is approximately $50 ($20 per unit × 2.5 units per vessel).

TABLE 9—TOTAL COSTS OF SPANNER WRENCH-CARRIAGE REQUIREMENT

	Affected vessels (A)	10 Percent of count of 1½″ installations (B)	Wrench costs (C)	Total* (B × C)
Spanner Wrench Price	261	665	$20	$13,290

*Totals may not sum due to rounding.

Summary of Total Costs From All Provisions

The total cost of this rule stems from three provisions: (1) Installation of a sensing device for vessels using sample extraction fire detection methods; (2) the NFPA 10 certification costs for owners and operators who wish to continue performing annual maintenance themselves; and (3) the spanner wrench carriage requirement. Table 10 summarizes the total costs for these provisions and Table 11 presents the average total discounted and annualized costs by inspection subchapter (7 percent discount rate). Over the 10-year period of analysis, we estimate total discounted costs of these provisions to be approximately $1.1 million and the annualized (rounded) cost at $156,600 using a discount rate of 7 percent.

TABLE 10—ESTIMATE FOR TOTAL COSTS

Year	Undiscounted costs				Discounted costs	
	Sample extraction	NFPA 10 Certification and recordkeeping	Spanner wrenches	Undiscounted total costs	Total costs (7 percent)	Total costs (3 percent)
1	$0	$365,873	$13,290	$379,163	$354,358	$368,120
2	0	121,958		121,958	106,523	114,957
3	1,243	121,958		123,201	100,569	112,746
4	1,243	121,958		123,201	93,989	109,462
5	1,243	121,958		123,201	87,840	106,274
6		121,958		121,958	81,266	102,138
7		121,958		121,958	75,949	99,163
8		121,958		121,958	70,981	96,275
9		121,958		121,958	66,337	93,470
10		121,958		121,958	61,997	90,748
Totals *	3,729	1,463,493	13,290	1,480,512	1,099,809	1,293,353
Annualized					156,588	151,620

* Totals may not sum due to rounding.

Total Costs by CFR Subchapter

As this rule affects a range of commercial vessels regulated under a number of 46 CFR subchapters, we present a summary of those affected vessels organized by CFR subchapter designation in Table 11. This summary aggregates the per-vessel costs based on a vessel's inspection subchapter designation. The summary in Table 11 presents the average 10-year and annualized costs, discounted at 7 percent. We also present the total number of affected vessels and the average annualized discounted cost per vessel (7 percent). Over the 10-year period of analysis, we estimate approximately 1,986 vessels will incur an average annualized cost of $79 per vessel.

TABLE 11—AVERAGE DISCOUNTED TOTAL COSTS BY INSPECTION SUBCHAPTER

[7 percent]

CFR Subchapter designation	Description	Discounted total costs (7 percent)	Annualized costs (7 percent) (A)	Affected population (B)	Annualized costs per vessel (A/B)
C	Uninspected Vessels	$0	$0	n/a	n/a
D	Tank Vessels	205,319	29,233	326	$90
H	Passenger Vessels >100 GT	18,585	2,646	29	91
I	Cargo Vessels	103,299	14,708	163	90
IA	MODU	5,039	717	8	90
K	Small Passenger Vessels	39,298	5,595	90	49
L	Offshore Supply Vessels	35,270	5,022	56	90
N	Dangerous Cargoes (Dry Bulk)	2,519	359	4	90
R	Nautical Schools	2,519	359	4	90
T	Small Passenger Vessels	653,951	93,108	1,252	75
U	Oceanographic Research	5,039	717	8	90
UNSPECIFIED		28,971	4,125	46	90
Totals *		1,099,809	156,588	1,986	** 79

* Totals may not sum due to rounding.
** Average across all vessels.

Benefits

1. Harmonization and Compliance with International and National Standards

The benefits of the rule include harmonization and compliance with current international consensus standards, and harmonization with national industry consensus standards.

For U.S. vessels to receive SOLAS certification, they must be constructed and maintained to international SOLAS standards in addition to Coast Guard regulations. Therefore, harmonizing our regulations with SOLAS requirements reduces the regulatory burden on vessel owners and operators. Further, for SOLAS vessels, compliance with SOLAS standards is necessary to prevent a vessel from being subject to potential detention by Port State Control officers. Port State Control officers can detain a ship in a foreign port and require that any deficiencies be rectified before the ship can depart. Delays of this type can be costly to the owners and operators of vessels. Additionally, permitting non-SOLAS vessels to use certain equipment and materials approved to international SOLAS standards instead of domestic standards will give these vessels more options during the design, installation and outfitting process of the vessel.

For both SOLAS and non-SOLAS vessels, the harmonization with national industry consensus standards allows vessels to take advantage of modern technologies developed for shoreside use. The marine market for fire safety equipment is much smaller than that for the shoreside industry and, by incorporating the use of appropriate national industry consensus standards, this rule allows vessels a wider choice of equipment that still meets the standards required for vessel safety. This increase in availability and selection of products and services allows owners and operators to increase their purchasing power by improving the product and pricing options available through greater competition.

Most of the harmonization provisions, whether international standards or modern industry consensus standards are not expected to impose any additional costs on industry because they will not require the immediate replacement of serviceable current equipment. Current equipment will be replaced only at the end of its serviceable life, in most cases. The cost of replacement equipment that meets the new standards is expected to be the same or less costly than its current counterpart in the marine market. Additionally, these provisions provide additional economic efficiencies through the expansion of markets, particularly international markets.

2. NFPA 10 Certification

Because of its relatively large size, the shoreside fire fighting industry drives innovations and the establishment of standards. NFPA 10 certification for individuals maintaining fire extinguishers is an established shoreside standard and practice helping to ensure that pressure vessels are properly handled and maintained. Similarly, NFPA 10 certification for mariners servicing fire extinguishers helps to ensure that those performing the maintenance have been trained to a uniform acceptable standard. These certifications help to preserve the margin of safety necessary when handling pressure vessels, such as portable fire extinguishers. Additionally, national industry consensus standards, incorporated by reference, help to ensure that maintenance is performed in a consistent manner. This allows vessel owners and operators to take advantage of improved methodologies and safe operating procedures as well as removing barriers for the maintenance industry to service the maritime sector, potentially expanding the market of service providers and reducing costs.

3. Ventilation of Potentially Toxic or Flammable Gases for Systems Using Sample Gas Extraction

Sample gas extraction systems which route environmental samples from the cargo holds to the bridge so a watchstander can detect a problem by smell are considered by international consensus standards to be unacceptably dangerous. These potentially toxic or flammable gases may create hazardous conditions and may present unnecessary and avoidable risks to the watchstander. In recognition of this, the 1978 SOLAS protocol, which went into effect May 25, 1980, directed that the gases be vented to the exterior rather than to the bridge. The need for a reduction of human exposure to potentially hazardous environments is well recognized by OSHA as noted in their implementation of ventilation standards, including exhaust ventilation systems (29 CFR 1910.94(a)(4)). These standards specify that potentially toxic gasses should be routed away from human-occupied spaces.

Additionally, the installation of a detection system provides increased warning capabilities as both a visual and audible alarm are installed. As such, the detection system reduces detection time as the sensitivity to gases, which indicates potential problems, is much more sensitive and consistent than an individual crew member's olfactory sense. Finally, the environmental conditions are improved as potentially toxic or flammable gases are no longer routed into human-occupied spaces.

4. Spanner Wrench Carriage Requirement

The requirement for spanner wrenches ensures that the safety equipment installed onboard vessels is available for use. These requirements ensure that a 1½ inch hose can be used in the case of an emergency. Additionally, requiring the placement of the wrench near the hose installation may reduce response time as the necessary tool is readily available.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In order to determine whether this rule will have a significant impact on a substantial number of small entities, we assume the maximum potential impact any single vessel and entity will incur when estimating costs. Table 12 illustrates this possibility should a single entity choose to implement these requirements on the same vessel during the first year. We anticipate that the estimated average annualized discounted cost (7 percent) per vessel to be $79. Table 11 (above) discusses the distribution of costs by CFR subchapter and we note that the annualized discounted costs (7 percent) range from approximately $49 to $90.

TABLE 12—ESTIMATED MAXIMUM UNDISCOUNTED FIRST YEAR COSTS

CFR subchapter designation	Description	Sample extraction costs	NFPA 10 costs	Spanner wrench costs	Totals (undiscounted)		
					Total costs	Vessel count	Cost per vessel
C	Uninspected Vessels		$0		$0	n/a	n/a
D	Tank Vessels		69,265		69,265	326	$212
H	Passenger Vessels > 100 GT.	$1,243	5,949		7,192	28	257
I	Cargo Vessels	2,486	34,208		36,694	161	228
IA	MODU		1,700		1,700	8	212
K	Small Passenger Vessels.		9,774	$2,240	12,014	46	261
L	Offshore Supply Vessels.		11,898		11,898	56	212
N	Dangerous Cargoes (Dry Bulk).		850		850	4	212
R	Nautical Schools		850		850	4	212
T	Small Passenger Vessels.		219,906	11,050	230,956	1,035	223
U	Oceanographic Research.		1,700		1,700	8	212
UNSPECIFIED			9,774		9,774	46	212

We next calculate the expected impact on small entities using a 1 percent revenue impact as a threshold level. In order for a small entity to incur this threshold value, their average annual revenue must be less than the 1 percent revenue listed in table 13 below. Using information from several industry sources which contain revenue and employee size information (such as Manta, Cortera, and ReferenceUSA), the Coast Guard has developed a database of entities in the maritime industry which includes the vessels they own. Table 13 presents the distribution of these entities which is broken down by the vessel inspection subchapter designation, the estimated number of small entities, and the estimated count of small entities with revenue under the threshold value based on the cost impact presented in Table 12.

TABLE 13—ESTIMATED DISTRIBUTION OF SMALL ENTITIES BY INSPECTION SUBCHAPTER

CFR Subchapter designation	Number of small entities	Average revenue	Maximum revenue	Minimum revenue	Revenue for a 1 percent impact	Count of entities under the threshold
C	1,094	$1,380,864,403	$187,437,000,000	$15,000	n/a	n/a
D	146	21,494,060,774	187,437,000,000	62,000	21,247	0
H	45	100,290,000	500,000,000	500,000	25,686	0
I	142	86,252,652	1,070,988,000	70,000	22,791	0
IA	16	242,016,333	1,767,445,000	390,000	21,247	0
K	48	5,915,538	50,000,000	110,000	26,118	0
L	18	4,532,613	20,000,000	150,000	21,247	0
N	3	27,075,000	100,000,000	500,000	21,247	0
R	6	849,996	1,549,979	200,000	21,247	0
T	1,015	12,532,100	1,000,000,000	9,000	22,315	4
U	8	27,500,000	50,000,000	5,000,000	21,247	0
UNSPECIFIED	347	46,920,905	1,390,835,000	2,000	21,247	5
BLANK *	24	58,153,333	741,370,000	140,000	n/a	n/a
Totals **	2,912					

* Vessels with 'BLANK' inspection subchapters are treated as 'Uninspected.'
** Totals may not sum due to rounding.

We classify small entities using the North American Industry Classification System (NAICS) codes for those entities that had revenue and size data. The 2,912 small entities with data are represented by 262 different NAICS codes or categories. We used the Small Business Administration size standards for each NAICS code to determine if a business was small. We found that the top 10 NAICS categories represent about 41 percent, or 1,191 of the 2,912 small entities that we analyzed. The remaining 59 percent, or 1,721 small entities, are represented by 252 different NAICS categories. The top 10 NAICS categories as described by the United States Census Bureau and their approximate revenues are presented in Table 14.

TABLE 14—TOP 10 NAICS CODES AND THEIR MINIMUM, MAXIMUM, AND AVERAGE REVENUE

NAICS	Description	Average revenue	Minimum revenue	Maximum revenue
487210	Scenic and Sightseeing Transportation, Water	$1,944,343	$50,000	$50,000,000
488330	Navigational Services to Shipping	8,345,361	44,000	500,000,000
713990	All Other Amusement and Recreation Industries	1,102,422	36,000	69,921,582
238910	Site Preparation Contractors	32,709,859	300,000	1,767,445,000
713930	Marinas	4,630,929	78,000	50,000,000
488390	Other Support Activities for Water Transportation	18,174,058	30,000	1,390,835,000
561990	All Other Support Services	1,102,015	46,000	50,000,000
441222	Boat Dealers	10,158,095	130,000	80,000,000
336611	Ship Building and Repairing	46,894,870	99,000	500,000,000
813410	Civic and Social Organizations	2,517,346	80,000	6,308,457

The Coast Guard assumes that entities will choose to minimize revenue impacts for any given year; therefore, we estimate the revenue impact will more closely resemble the discussion presented in Table 11. However, based on the analysis presented in Tables 12 and 13, at most 9 out of 1,362 (1,015 + 347) entities may experience annual costs exceeding the 1 percent threshold. As a result, the Coast Guard assumes this rule will not significantly impact revenues on a substantial number of small entities (*i.e.*, annual costs are expected to be less than one percent of annual revenues), and therefore, does not represent a significant economic impact on affected small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule calls for a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1310.3 (c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The Title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection. This rule will modify an existing collection as discussed below.

Title: Certificates of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 1625–0037.

Summary of Collection of Information: These requirements provide the marine inspector with information regarding the condition of a vessel and its equipment, a list of the type and amount of cargo that has been or is being carried on a vessel, plus information about the owner of the vessel. Each of these requirements relate to the promotion of safety of life at sea and protection of the marine environment.

Need for Information: The certification requirement will provide proof that the crewmember assigned to perform the annual fire extinguisher maintenance for rechargeable fire extinguishers onboard a vessel is trained and certified in accordance with NFPA 10 industry standards. Vessel owners and operators must have crew members' certificates available when asked by an inspector to verify crew member training.

Use of Information: The certificate verifies that crewmembers performing annual maintenance on rechargeable fire extinguishers are current on NFPA 10 training and standards.

Description of the Respondent: We anticipate that a small number of the affected population (1,722 vessel owner/operators) will perform their own annual maintenance on rechargeable fire extinguishers. Vessel owners and operators do have the option of hiring servicing companies to perform the annual maintenance instead of performing the task themselves. However, if a vessel owner or operator elects to perform the annual maintenance on rechargeable fire extinguishers themselves, the crewmember selected for the duty must be trained and certified in NFPA 10 industry standards. We assume the vessel Master will maintain the certificate on file.

Number of Responents: We estimate that a Master for each of 1,722 vessels will be affected by this rule. See Table 6 for an estimated detailed description of the number of vessels affected by this requirement.

Frequency of the Response: We anticipate that all 1,722 vessels will have a crewmember trained and certified in accordance with NFPA 10 industry standards to perform annual maintenance on rechargeable fire extinguishers. We estimate that in the first year all vessels in the affected population will require certification. After the first year, we estimate that 1/3 of the affected population, or 574 crewmembers, will require new certification or re-certification. See footnote 8 above for an explanation of the assumption used in the certification for years 2 and 3. We estimate the three year average number of respondents to be 957 ((1,722 + 574 + 574)/3).

Burden of Response: We estimate an additional burden imposed by this rule to be 4 minutes on a per-vessel basis. The amount of annual recordkeeping required is anticipated to be less than two minutes for filing the certificate, and another two minutes for producing the certificate during periodic inspections.

Estimate of Total Annual Burden: We estimate the total annual burden for the affected population in the initial year of this rule to be 114.8 hours ((4 min × 1,722 total affected population)/60 minutes). After the initial year, we anticipate that ⅓ of the affected population, 574 vessel Masters,[10] will be burdened with this new requirement each year. We estimate the annual burden, after the initial year, to be 38.3 hours ((4 min × 574)/60 minutes). The annual cost of this burden in the initial year is estimated to be $5,970 (114.8 hours × $52 Vessel Masters), and after the initial year to be $1,990 (38.3 hours × $52 Vessel Masters). The per-vessel burden cost is estimated to be $3.47 ($1,990/574) (note that the per-vessel cost burden in the initial year will be equal to the burden in the subsequent years).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), we have submitted a copy of this rule to OMB for its review of the collection of information.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has not yet completed its review of this collection. Therefore, we are not making 33 CFR 145.01 and 149.408; 46 CFR 25.30–10; 31.01–2; 31.10–18; 71.25–20; 91.25–7; 91.25–20; 107.235; 169.247; 176.810; 188.01–5; and 189.25–20 effective until OMB completes action on our information collection request, at which time we will publish a **Federal Register** notice describing OMB's action and, if OMB grants approval, notifying you when 33 CFR 145.01 and 149.408; 46 CFR 25.30–10; 31.01–2; 31.10–18; 71.25–20; 91.25–7; 91.25–20; 107.235; 169.247; 176.810; 188.01–5; and 189.25–20 take effect.

E. Federalism

A rule has implications for federalism under E.O. 13132 ("Federalism") if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental principles and preemption requirements described in E.O. 13132. Our analysis is explained in the following paragraphs.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard, including categories for inspected vessels. It is also well-settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)).*

This rule regulates fire prevention, protection, detection, extinguishing equipment, and materials on inspected vessels, and therefore the States may not regulate within this category of fire prevention equipment. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

Additionally, towing vessels are now subject to inspection under 46 U.S.C. 3301 and 3306. As mentioned above, it is well-settled that states may not regulate within categories covered in 46 U.S.C. 3306 for inspected vessels. Since this rule creates comprehensive regulations for fire prevention, protection, detection, extinguishing equipment, and materials on towing vessels, states may not regulate within this category of fire prevention equipment. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

Congress also granted to the Coast Guard, through delegation by the Secretary, the authority to promulgate regulations with respect to fire fighting equipment on uninspected vessels. 46 U.S.C. 4102(a) requires that "[e]ach uninspected vessel propelled by machinery shall be provided with the number, type, and size of fire extinguishers, capable of promptly and effectively extinguishing burning liquid fuel, that may be prescribed by regulation." This rule regulates, among other things, fire extinguishing equipment on uninspected vessels, and therefore the States may not regulate within this category. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

Additionally, with regard to regulations promulgated under 46 U.S.C. 4302 concerning recreational vessels, under 46 U.S.C. 4306, those Federal regulations that establish minimum safety standards for recreational vessels and their associated equipment, as well as regulations that establish procedures and tests required to measure conformance with those standards, preempt State law, unless the State law is identical to a Federal regulation or a State has specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. This rule establishes minimum requirements for fire extinguishing equipment for recreational vessels, and therefore the States may not issue regulations that differ from Coast Guard regulations within these fire equipment categories for recreational vessels. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132. Congress also granted the authority, through delegation by the Secretary, to promulgate regulations for uninspected commercial fishing vessels, which requires these vessels to "be equipped with readily accessible fire extinguishers capable of promptly and effectively extinguishing a flammable or combustible liquid fuel fire." 46 U.S.C. 4502(a)(1). Also, Congress permitted the Secretary to establish minimum safety standards for certain uninspected commercial fishing vessels, including standards for "fire protection and fire fighting equipment, including fire alarms and portable and semi-portable fire extinguishing equipment." 46 U.S.C. 4502(c)(2)(C). As this rule regulates fire prevention, protection, detection, extinguishing equipment, and materials on uninspected commercial fishing vessels, the States may not regulate within this category of equipment, therefore, this rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

Additionally, Congress specifically granted the authority to regulate artificial islands, installations, and other devices permanently or temporarily attached to the OCS and in the waters adjacent thereto as it relates to the safety of life to the Secretary of the Department in which the Coast Guard is operating. 43 U.S.C. 1333(d)(1) states that the Secretary "shall have the authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices . . . as he may deem necessary." As this rule regulates fire prevention, protection, detection, extinguishing equipment, and materials to ensure safety of life on these OCS installations, it falls within the scope of authority Congress has granted exclusively to the Secretary. This authority has been delegated to the Coast Guard and is exercised in this rulemaking, and the States may not regulate within this category of safety equipment. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

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[10] As discussed above in section *VII. Regulatory Analysis,* we assume a vessel master will be responsible for filing and producing the certificate upon request.

Finally, Congress granted the authority to regulate deepwater ports to the Secretary of Transportation. 33 U.S.C. 1509(b) states that the Secretary of Transportation "shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto." When the Coast Guard was an agency within the Department of Transportation, the authority to issue regulations with respect to safety on deepwater ports was delegated to the Coast Guard. See 49 CFR 1.46(s). The Homeland Security Act of 2002, Public Law 107–296, transferred the Coast Guard to the Department of Homeland Security. Pursuant to the Homeland Security Act, authorities that were delegated to the Coast Guard remained intact during this transfer by operation of law. The authority was then delegated to the Commandant of the Coast Guard through Department of Homeland Security Delegation 0170.1. Since this rule regulates fire prevention, protection, detection, extinguishing equipment and materials to ensure safety on deepwater ports, it falls within the scope of authority that has been transferred, delegated to, and exercised by the Coast Guard. The States may not regulate within this category of safety equipment. Therefore, the rule is consistent with the principles of federalism and preemption requirements in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

The Coast Guard invited State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to the NPRM. In accordance with Executive Order 13132, Federalism, the Coast Guard provides this federalism impact statement:

(1) There were no comments submitted by State or local governments to the Notice of Proposed Rulemaking published in the **Federal Register** on January 13, 2014 (79 FR 2254).

(2) There were no concerns expressed by State or local governments.

(3) As no concerns were expressed or comments received from State or local governments, there is no statement required to document the extent to which any concerns were met.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under E.O. 12630 ("Governmental Actions and Interference with Constitutionally Protected Property Rights").

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 ("Civil Justice Reform"), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under E.O. 13045 ("Protection of Children from Environmental Health Risks and Safety Risks"). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175 ("Consultation and Coordination with Indian Tribal Governments"), because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this final rule under E.O. 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"). We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under E. O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

L. Technical Standards and 1 CFR Part 51

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule incorporates by reference the following new voluntary consensus standards, which are listed and summarized below:

- ANSI/FM 3260 Approvals, American National Standard for Radiant Energy-Sensing Fire Detectors for Automatic Fire Alarm Signaling, February 2004. This standard sets performance requirements for radiant energy sensing fire detectors used for automatic fire alarm signaling.
- ASTM F1546/F1546 M—96 (Reapproved 2012), Standard Specification for Fire Hose Nozzles, approved May 1, 2012. This specification covers the material and performance requirements for adjustable-pattern water spray nozzles intended for general and marine fire fighting use.
- CGA C–6–2007, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Tenth Edition. This standard covers visual inspections required to ensure that compressed gas

cylinders, including those used on ships for gaseous fire suppression systems, are in a safe working condition.

- FSS Code, International Code for Fire Safety Systems, Second Edition, 2007 Edition (Resolution MSC.98(73)). This code provides standards for design, installation, and performance of marine fire safety systems including fire detection, alarm, and extinguishing systems.
- 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition. This code sets forth fire test procedures for testing, evaluating and approving products used as the materials of construction of vessels.
- IEC 60092–504:2001(E), Electrical Installations in Ships—Part 504: Special Features—Control and Instrumentation, Third edition, March 2001. This standard is intended to ensure safety in the design, selection, installation, maintenance and use of electrical equipment for the generation, storage, distribution and utilization of electrical energy for all purposes in seagoing ships.
- IMO Resolution A.653(16), Recommendation on Improved Fire Test Procedures for Surface Flammability of Bulkhead, Ceiling and Deck Finish Materials, adopted on 19 October 1989. This resolution specifies a procedure for measuring fire characteristics of bulkhead, ceiling and deck finish materials for characterizing their flammability and resultant suitability for shipboard use.
- IMO Resolution A.753(18), Guidelines for the Application of Plastic Pipes on Ships, adopted on 4 November 1993. This resolution sets forth material design properties, performance criteria, and test methods for plastic pipe used in vessels.
- IMO Resolution A.754(18), Recommendation on Fire Resistance Tests for "A", "B" and "F" Class Divisions, adopted 4 November 1993. This resolution sets forth the fire test procedures for determining the acceptability of products for use as parts of fire resistive decks, bulkheads, etc. in vessels.
- IMO Resolution A.1021(26), Code on Alerts and Indicators, 2009, adopted on 2 December 2009. This code provides general design guidance for shipboard alarms and indicators including information on type, location and priority of alarms and components.
- IMO Resolution MSC.313(88), Amendments to the Guidelines for the Application of Plastic Pipes on Ships, adopted 26 November 2010. This resolution sets forth material design properties, performance criteria, and test methods for plastic pipe used in vessels.
- International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum. This convention sets forth uniform principles and rules for the promotion of maritime safety, including passive and active elements of ship construction and equipment for fire protection, detection, and extinction.
- ISO/IEC 17025:2005(E), International Standard: General requirements for the competence of testing and calibration laboratories, Second edition, 15 May 2005. This standard sets forth management and technical requirements for the accreditation of testing and calibration laboratories.
- NFPA 12A, Standard on Halon 1301 Fire Extinguishing Systems, 2009 Edition, effective July 18, 2008. This standard provides guidance in purchasing, designing, installing, testing, inspecting, approving, listing, operating, maintaining, decommissioning and removing halogenated agents extinguishing systems such as the legacy Halon 1301 systems used on some ships.
- NFPA 1964, Standard for Spray Nozzles, 2008 Edition, effective December 31, 2007. This standard covers the material and performance requirements for adjustable-pattern water spray nozzles intended for general and marine fire fighting use.
- UL 8, Standard for Safety for Water Based Agent Fire Extinguishers, Sixth Edition, dated February 28, 2005, as amended through July 27, 2010. This standard covers the construction, performance and testing, exclusive of performance during fire tests, of portable foam-type fire extinguishers.
- UL 154, Standard for Safety for Carbon-Dioxide Fire Extinguishers, Ninth Edition, dated February 28, 2005, as amended through November 8, 2010. This standard covers the construction, performance and testing, exclusive of performance during fire tests, of 0portable carbon-dioxide fire extinguishers.
- UL 162, Standard for Safety for Foam Equipment and Liquid Concentrates, Seventh Edition, dated March 30, 1994, as amended through October 10, 2014. This standard sets forth requirements and tests for the approval of fire fighting foam equipment and liquid concentrates.
- UL 299, Standard for Safety for Dry Chemical Fire Extinguishers, Eleventh Edition, dated April 13, 2012. This standard covers the construction, performance and testing, exclusive of performance during fire tests, of portable dry chemical fire extinguishers.
- UL 464, Standard for Safety for Audible Signaling Appliances, Ninth Edition, dated April 14, 2009, as amended through April 16, 2012. This standard covers the construction, performance and testing of electrically and electronically operated bells, buzzers, horns, and similar audible signal appliances for fire protective signaling systems.
- UL 626, Standard for Safety for Water Fire Extinguishers, Eighth Edition, dated February 28, 2005, as amended through November 8, 2010. This standard covers the construction, performance and testing, exclusive of performance during fire tests, of portable water fire extinguishers.
- UL 711, Standard for Safety for Rating and Fire Testing of Fire Extinguishers, Seventh Edition, dated December 17, 2004, as amended through April 28, 2009. This standard covers rating, and performance during fire tests, of fire extinguishers intended for use on various classes of fires.
- UL 1480, Standard for Safety for Speakers for Fire Alarm, Emergency, and Commercial and Professional Use, Fifth Edition, dated January 31, 2003, as amended through June 23, 2010. This standard covers the construction and performance of speakers for use in, among other things, fire alarm systems.
- UL 1971, Standard for Safety for Signaling Devices for the Hearing Impaired, Third Edition, approved November 29, 2002, as amended through October 15, 2008. This standard covers the construction and performance of emergency signaling devices for the hearing impaired.
- UL 2129, Standard for Safety for Halocarbon Clean Agent Fire Extinguishers, Second Edition, dated February 28, 2005, as amended through March 30, 2012. This standard covers the construction, performance and testing, exclusive of performance during fire tests, of portable halocarbon agent fire extinguishers.

This final rule also incorporates by reference the following updated voluntary consensus standards:

- NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009. This standard applies to the selection, installation, inspection, maintenance, recharging, and testing of portable fire extinguishers.
- NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009. This standard provides requirements for the design and installation of automatic fire sprinkler systems.

- NFPA 70, National Electronic Code, 2011 Edition. This standard addresses the installation of electrical conductors, equipment, and raceways; signaling and communications conductors, equipment, and raceways; and optical fiber cables and raceways in commercial, residential, and industrial occupancies.
- NFPA 72, National Fire Alarm and Signaling Code, 2010 Edition, effective August 26, 2009. This standard covers the application, installation, location, performance, inspection, testing, and maintenance of fire alarm systems and their components.
- UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001. This standard covers the construction, performance, and testing of firehoses.
- UL 38, Standard for Safety for Manual Signaling Boxes for Fire Alarm Systems, Eighth Edition, dated July 3, 2008, as amended through December 11, 2008. This standard covers the construction, performance, and testing of manual signaling boxes used in fire alarm systems.
- UL 268, Standard for Safety for Smoke Detectors for Fire Alarm Systems, Sixth Edition, dated August 14, 2009. This standard covers the construction, performance, and testing of smoke detectors used in fire alarm and suppression systems.
- UL 521, Standard for Safety for Heat Detectors for Fire Protective Signaling Systems, Seventh Edition, dated February 19, 1999, as amended through October 3, 2002. This standard covers the construction, performance, and testing of heat detectors used in fire alarm and suppression systems.
- UL 864, Standard for Safety for Control Units and Accessories for Fire Alarm Systems, Ninth Edition, dated September 30, 2003, as amended through January 12, 2011. This standard covers the construction, performance, and testing of control units used in fire alarm systems.

Consistent with 1 CFR part 51 incorporation by reference provisions, this material is reasonably available. Interested persons have access to it through their normal course of business, may purchase it from organizations identified in 33 CFR 140.7 and 149.3, and 46 CFR 25.01–3, 31.01–2, 32.01–1, 34.01–15, 56.01–2, 71.25–3, 76.01–2, 91.25–7, 92.01–2, 95.01–2, 108.101, 114.600, 125.180, 147.7, 159.001–4, 161.002–1, 162.027–2, 162.028–1, 162.039–1, 162.163–2, 164.105–2, 164.106–2, 164.107–2, 164.108–2, 164.109–2, 164.110–2, 164.111–2, 164.112–2, 164.117–2, 164.136–2, 164.137–2, 164.138–2, 164.139–2, 164.141–2, 164.142–2, 164.144–2, 164.146–2, 164.201–2, 164.207–2, 169.115, 175.600, 188.01–5, and 193.01–3, or may view a copy by the means we have identified in those sections.

M. Coast Guard Authorization Act

Section 608 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) adds new section 2118 to 46 U.S.C. Subtitle II (Vessels and Seamen), Chapter 21 (General). New section 2118(a) sets forth requirements for standards established for approved equipment required on vessels subject to 46 U.S.C. Subtitle II (Vessels and Seamen), Part B (Inspection and Regulation of Vessels). Those standards must be "(1) based on performance using the best available technology that is economically achievable; and (2) operationally practical." *See* 46 U.S.C. 2118(a). This rule revises the standards for fire prevention, protection, detection, extinguishing equipment, and materials regulations on vessels subject to 46 U.S.C. Subtitle II, Part B, and the Coast Guard has ensured this rule satisfies the requirements of 46 U.S.C. 2118(a), by employing the most recent industry consensus standards, as necessary and appropriate.

N. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD (National Environmental Policy Act Implementing Procedures and Policy For Considering Environmental Impacts Manual), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370f, and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves design and approval standards for fire protection, detection, extinguishing equipment, and materials and falls under section 2.B.2, figure 2–1, paragraphs (34)(a), (d), and (e) of the Instruction, and under Section 6(a) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy" as published in the **Federal Register**, 67 FR 48243, July 23, 2002. These paragraphs exempt regulations which are editorial or procedural, concern the inspection and equipping of vessels, involve equipment approval and carriage requirements, and vessel operation safety standards. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 140

Continental shelf, Incorporation by reference, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 145

Continental shelf, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health.

33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

33 CFR Part 149

Fire prevention, Harbors, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 50

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Incorporation by reference, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 72

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

46 CFR Part 107

Incorporation by reference, Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 113

Communications equipment, Fire prevention, Vessels.

46 CFR Part 114

Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 116

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels, Seamen.

46 CFR Part 118

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 122

Marine safety, Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 125

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Seamen.

46 CFR Part 132

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 147

Hazardous materials transportation, Incorporation by reference, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

46 CFR Part 159

Business and industry, Incorporation by reference, Laboratories, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 161

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Incorporation by reference, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 164

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 176

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 177

Marine safety, Incorporation by reference, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 181

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

46 CFR Part 182

Marine safety, Passenger vessels.

46 CFR Part 185

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Incorporation by reference, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Incorporation by reference, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Incorporation by reference, Marine safety, Oceanographic research vessels.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 140, 145, 148, and 149, and 46 CFR parts 25, 27, 28, 30, 31, 32, 34, 50, 56, 70, 71, 72, 76, 78, 90, 91, 92, 95, 107, 108, 113, 114, 115, 116, 118, 122, 125, 132, 147, 159, 160, 161, 162, 164, 167, 169, 175, 176, 177, 181, 182, 185, 188, 189, 190, and 193 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 140—GENERAL

■ 1. The authority citation for part 140 continues to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 140.3 by adding, at the end of the section, a sentence to read as follows:

§ 140.3 Applicability.

* * * The regulations in this subchapter (parts 140 through 147) have preemptive effect over state or local regulations in the same field.

■ 3. Revise § 140.7 to read as follows:

§ 140.7 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036, 212–642–4900, *https://www.ansi.org.*

(1) ANSI A10.14–1975, Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use, IBR approved for § 142.42(b).

(2) ANSI/UL 1123–1987, Standard for Marine Buoyant Devices, IBR approved for § 143.405(a).

(3) ANSI Z41–1983, American National Standard for Personal Protection-Protective Footwear, IBR approved for § 142.33(a) and (b).

(4) ANSI Z87.1–1979, Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 142.27(a) and (c).

(5) ANSI Z88.2–1980, Practices for Respiratory Protection, IBR approved for § 142.39(a) through (c).

(6) ANSI Z89.1–1981, Safety Requirements for Industrial Head Protection, IBR approved for § 142.30(a) and (b).

(c) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) IMO Assembly Resolution A.414 (XI), Code for Construction and Equipment of Mobile Offshore Drilling Units, IBR approved for §§ 143.207(c) and 146.205(c).

(2) [Reserved]

(d) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 145.01(b).

(2) [Reserved]

PART 145—FIRE FIGHTING EQUIPMENT

■ 4. The authority citation for part 145 continues to read as follows:

Authority: Sec. 633, 63 Stat. 545; sec. 4, 67 Stat. 462; 14 U.S.C. 633; 43 U.S.C. 1333.

■ 5. Revise § 145.01 to read as follows:

§ 145.01 Portable and semi-portable fire extinguishers.

(a) On all manned platforms and on all unmanned platforms where crews are continuously working on a 24-hour basis, Coast Guard-approved portable fire extinguishers and/or Coast Guard-approved semi-portable fire extinguishers must be installed and maintained. On all unmanned platforms where crews are not continuously working on a 24-hour basis, Coast Guard-approved portable fire extinguishers and/or Coast Guard-approved semi-portable fire extinguishers are required to be installed and maintained only when crews are working on them.

(b) Portable and semi-portable fire extinguishers must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 140.7 of this chapter) as amended here:

(1) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(2) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(3) Non-rechargeable or non-refillable fire extinguishers must be inspected and maintained in accordance with NFPA 10. However, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(4) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records has not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

§ 145.05 [Removed and Reserved]

■ 6. Remove and reserve § 145.05.

■ 7. Amend § 145.10 as follows:

■ a. Revise the section heading;

■ b. In paragraphs (a) and (b), remove the word "shall" and add, in its place, the word "must";

■ c. Add paragraphs (c) and (d); and

■ d. Revise table 145.10(a).

The revisions and additions read as follows:

§ 145.10 Location, number, and installation of fire extinguishers.

* * * * *

(c) Semi-portable extinguishers must be fitted with a suitable hose and nozzle, or other practicable means, so all of the space can be protected.

(d) Table 145.10(a) of this section indicates the minimum number and size of fire extinguishers required for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 145.10(a)—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS

Space	Minimum required rating	Quantity and location
Safety Areas:		

TABLE 145.10(a)—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS—Continued

Space	Minimum required rating	Quantity and location
Communicating corridors	2–A	1 in each main corridor not more than 150 ft apart. (May be located in stairways.)
Radio room	20–B:C	1 in the vicinity of the exit.
Accommodations:		
Sleeping accommodations	2–A	1 in each sleeping accommodation space outfitted for 4 or more persons.
Service Spaces:		
Galleys	40–B:C	1 for each 2,500 sq ft of floor space or fraction thereof.
Storerooms	2–A	1 for each 2,500 sq ft of floor space or fraction thereof. The extinguisher must be located in the vicinity of the exits, either inside or outside of spaces.
Machinery Spaces:		
Gas-fired boilers	40–B	2 required.
	160–B	1 required.[1]
Oil-fired boilers	40–B	2 required.
	160–B	2 required.[1]
Internal combustion or gas turbine engines	40–B	1 for each engine.[2]
Electric motors or generators of open type	40–B:C	1 for each 2 motors or generators.[3]

[1] Not required where a fixed extinguishing system is installed.

[2] When the installation is on the weather deck or open to the atmosphere at all times, then one 40–B extinguisher for every three engines is allowable.

[3] Small electrical appliances, such as fans, are exempt.

■ 8. Add § 145.15 to read as follows:

§ 145.15 Location and number of fire extinguishers required for vessels contracted for prior to August 22, 2016.

(a) Vessels contracted for prior to August 22, 2016 must meet the following requirements:

(1) Previously installed extinguishers with extinguishing capacities smaller than what is required in table 145.10(a) of this part need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) All new equipment and installations must meet the applicable requirements in this part for new vessels.

(b) [Reserved]

PART 148—DEEPWATER PORTS: GENERAL

■ 9. The authority citation for part 148 continues to read as follows:

Authority: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

■ 10. Amend § 148.1 by adding, at the end of the section, a sentence to read as follows:

§ 148.1 What is the purpose of this subchapter?

* * * The regulations in this subchapter (parts 148 through 150) have preemptive effect over state or local regulations in the same field.''

PART 149—DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT

■ 11. The authority citation for part 149 is revised to read as follows:

Authority: 33 U.S.C. 1504, 1509; Department of Homeland Security Delegation No. 0170.1 (75).

■ 12. Add § 149.3 to read as follows:

§ 149.3 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 149.408(a) through (d).

(2) [Reserved]

■ 13. Amend § 149.403 as follows:

■ a. Revise the section heading; and

■ b. In paragraph (a), remove the word "supplemental'' and add, in its place, the word "excess''.

The revised section heading reads as follows:

§ 149.403 How can I request to use alternate or excess fire fighting and fire prevention equipment or procedures?

* * * * *

■ 14. Revise § 149.404 to read as follows:

§ 149.404 Can I use fire fighting equipment that is not Coast Guard approved?

(a) A deepwater port may use fire fighting equipment that is not Coast Guard approved as excess equipment, pursuant to § 149.403 of this subpart, if the equipment does not endanger the port or the persons aboard it in any way. This equipment must be listed and labeled by a nationally recognized testing laboratory (NRTL), as set forth in 29 CFR 1910.7, and it must be maintained in good working condition.

(b) Use of non-Coast Guard-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed by an NRTL as defined in 46 CFR 161.002–2, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), with specific regard to the hazardous location installation regulations in 46 CFR 111.105;

(3) Coast Guard plan review is completed for wiring plans; and

(4) The system and units remain functional as intended. To ensure this, marine inspectors may test and inspect the system.

§ 149.405 [Removed]

■ 15. Remove § 149.405.

■ 16. Revise § 149.408 to read as follows:

§ 149.408 What are the maintenance requirements for fire extinguishers?

(a) Portable and semi-portable extinguishers must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 149.3).

(b) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(c) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(d) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(e) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records has not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

■ 17. Revise § 149.409 to read as follows:

§ 149.409 How many fire extinguishers are needed and how should they be installed?

(a) Approved portable and semi-portable extinguishers must be installed in accordance with table 149.409 of this section.

(b) Semi-portable extinguishers must be located in the open so as to be readily seen.

(c) Semi-portable extinguishers must be fitted so that all portions of the space concerned may be covered.

(d) Table 149.409 of this section indicates the minimum required classification for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 149.409—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS, MINIMUM QUANTITY AND LOCATION

Space	Classification	Minimum quantity and location
(1) *Safety Areas*		
(i) Communicating corridors	2–A	One in each main corridor or stairway not more than 150 ft apart.
(ii) Radio room	20–B:C	One outside or near each radio room exit.
(2) *Accommodation Spaces*		
(i) Sleeping quarters	2–A	One in each sleeping space that fits more than four persons.
(3) *Service Spaces*		
(i) Galleys	40–B:C	One for each 2,500 sq ft or fraction thereof, for hazards involved.
(ii) Storerooms	2–A	One for each 2,500 sq ft or fraction thereof, located near each exit, either inside or outside the space.
(iii) Paint room	40–B	One outside each paint room exit.
(4) *Machinery Spaces*		
(i) Gas-fired boilers	40–B:C	Two.
	160–B	One.[1]
(ii) Oil-fired boilers	40–B:C	Two.
	160–B	Two.[1]
(iii) Internal combustion or gas turbine engines	40–B	One for each engine.[2]
(iv) Open electric motors and generators	40–B:C	One for each of two motors or generators.[3]
(5) *Helicopter Areas*		
(i) Helicopter landing decks	160–B	One at each access route.
(ii) Helicopter fueling facility	160–B	One at each fuel transfer facility.[4]

[1] Not required if a fixed system is installed.

[2] If the engine is installed on a weather deck or is open to the atmosphere at all times, one 40–B extinguisher may be used for every three engines.

[3] Small electrical appliances, such as fans, are exempt.

[4] Not required if a fixed foam system is installed in accordance with 46 CFR 108.489.

(e) Semi-portable extinguishers must be fitted with a suitable hose and nozzle, or other practicable means, so that all areas of the space can be protected.

■ 18. Revise § 149.410 to read as follows:

§ 149.410 Location and number of fire extinguishers required for vessels constructed prior to August 22, 2016.

Vessels contracted for prior to August 22, 2016 must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities smaller than what is required in table 149.409 of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

TITLE 46—SHIPPING

PART 25—REQUIREMENTS

■ 19. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1(II)(77), (92)(a), 92(b).

■ 20. Revise § 25.01–3 to read as follows:

§ 25.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Boat and Yacht Council (ABYC), 613 Third Street, Suite 10, Annapolis, MD 21403, 410–990–4460, *http://www.abycinc.org.*

(1) Standard A–1–78, Marine LPG-Liquefied Petroleum Gas Systems, December 15, 1978, IBR approved for § 25.45–2(b).

(2) Standard A–22–78, Marine CNG-Compressed Natural Gas Systems, December 15, 1978, IBR approved for § 25.45–2(b).

(3) Standard A–16–97, Electric Navigation Lights, July 1997, IBR approved for § 25.10–3(a).

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 25.30–10(a) through (d).

(2) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 25.30–15(c).

(3) NFPA 302, Fire Protection Standard for Pleasure and Commercial Motor Craft, 1989, IBR approved for § 25.45–2(b).

(d) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096, 724–776–4841, *http://www.sae.org.*

(1) SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, June 1, 1989, IBR approved for § 25.35–1.

(2) [Reserved]

(e) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 1111, Marine Carburetor Flame Arrestors, June 1988, IBR approved for § 25.35–1.

(2) [Reserved]

■ 21. Revise § 25.30–1 to read as follows:

§ 25.30–1 Applicability.

(a) The provisions of this subpart, with the exception of §§ 25.30–80 and 25.30–90 of this subpart, as applicable, apply to all vessels contracted for on or after August 22, 2016.

(b) Vessels contracted for prior to August 22, 2016 and after November 19, 1952, must meet the requirements of 46 CFR 25.30–80.

(c) Vessels contracted for prior to November 19, 1952, must meet the requirements of 46 CFR 25.30–90.

■ 22. Revise § 25.30–10 to read as follows:

§ 25.30–10 Portable fire extinguishers and semi-portable fire extinguishing systems.

(a) Portable and semi-portable extinguishers must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 25.01–3).

(b) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(c) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(d) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(e) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records has not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(f) Vaporizing-liquid type fire extinguishers containing carbon tetrachloride, chlorobromomethane, or other toxic vaporizing liquids are not acceptable as equipment required by this subchapter.

(g) Portable or semi-portable extinguishers, which are required on their name plates to be protected from freezing, must not be located where freezing temperatures may be expected.

(h) The use of dry chemical, stored pressure, fire extinguishers not fitted with pressure gauges or indicating devices, manufactured prior to January 1, 1965, may be permitted on motorboats and other vessels so long as such extinguishers are maintained in good and serviceable condition. The following maintenance and inspections are required for such extinguishers:

(1) When the date on the inspection record tag on the extinguishers shows that 6 months have elapsed since the last weight check ashore, then such extinguishers are no longer accepted as meeting required maintenance conditions until they are reweighed ashore, found to be in a serviceable condition, and within required weight conditions.

(2) If the weight of the container is ¼ ounce less than that stamped on the container, it must be serviced.

(3) If the outer seal or seals (which indicate tampering or use when broken) are not intact, the boarding officer or marine inspector will inspect such extinguishers to see that the frangible disc in the neck of the container is intact; and if such disc is not intact, the container must be serviced.

(4) If there is evidence of damage, use, or leakage, such as dry chemical powder observed in the nozzle or elsewhere on the extinguisher, the extinguisher must be serviced or replaced.

(i) Dry chemical extinguishers, stored pressure extinguishers, and fire extinguishers without pressure gauges or indicating devices manufactured after January 1, 1965, cannot be labeled with the marine type label described in 46 CFR 162.028–4. These extinguishers manufactured after January 1, 1965, may be carried onboard motorboats or other vessels as excess equipment.

(j) Semi-portable extinguishers must be fitted with a suitable hose and nozzle, or other practicable means, so that all portions of the space concerned may be covered.

■ 23. Revise § 25.30–15 to read as follows:

§ 25.30–15 Fixed fire extinguishing systems.

(a) When a fixed fire extinguishing system is installed, it must be a type approved or accepted by the Commandant (CG–ENG–4) or the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(b) If the system is a carbon-dioxide type, then it must be designed and installed in accordance with subpart 76.15 of part 76 of subchapter H (Passenger Vessels) of this chapter.

(c) If the system is an automatic sprinkler system then it must be designed and installed in accordance with Chapter 25 of NFPA 13 (incorporated by reference, see § 25.01–3).

■ 24. Amend § 25.30–20 as follows:

■ a. Remove the word "hand" wherever it appears.

■ b. In paragraph (a)(1), remove the word "shall" and add, in its place, the word "must"; after the words "need not carry", remove the word "such"; and after the words "fire extinguishers if the construction of", remove the words "such motorboats" and add, in their place, the words "the boats";

■ c. In table 25.30–20(a)(1), remove the text "B–1" and add, in its place, the text "5–B";

■ d. In footnote 1 of table 25.30–20(a)(1), remove the text "B–11" and add, in its place, the text "20–B"; and remove the text "B–I" and add, in its place, the text "5–B";

■ e. In footnote 3 of figure 25.30–20(a1), remove the word "Close" and add, in its place, the word "Closed".

■ f. Add paragraph (a)(3);

■ g. In paragraph (b), remove the word "hand-portable" and add, in its place, the word "portable".

■ h. In paragraph (c)(1), remove the word "shall" and add, in its place, the word "must";

■ i. In Table 25.30–20(b)(1), remove the text "B–II" and add, in its place, the text "20–B";

■ j. In paragraph (c)(2) introductory text, remove the word "shall" and add, in its place, the word "must"; and remove the words "fire-extinguishing" and add, in their place, the words "fire extinguishing";

■ k. In paragraph (c)(2)(i), remove the text "Type B–II" and add, in its place, the text "20–B"; and remove the word "shall" and add, in its place, the word "must";

■ l. In paragraph (c)(2)(ii), remove the text "Type B–III semiportable" and add, in its place, the text "160–B semi-portable"; remove the word "shall" wherever it appears and add, in its place, the word "must"; and remove the words "fire-extinguishing" wherever they appear and add, in their place the words "fire extinguishing";

■ m. In paragraph (c)(3), remove the text "Type B–III" and add, in its place, the text "160–B";

■ n. In paragraph (c)(4), remove the word "semiportable" and add, in its place, the word "semi-portable"; and after the words "fire extinguisher has wheels", remove the words "and is not required by this section";

■ o. Add paragraph (c)(5); and

■ p. In paragraphs (d)(1) and (2), remove the word "shall" and add, in its place, the word "must".

The additions read as follows:

§ 25.30–20 Fire extinguishing equipment required.

(a) * * *

(3) Table 25.30–20(a)(1) of this section indicates the minimum quantity and type of extinguisher to be carried. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

* * * * *

(c) * * *

(5) Table 25.30–20(b)(1) of this section indicates the minimum quantity and type of extinguisher to be carried. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

* * * * *

■ 25. Add § 25.30–80 to read as follows:

§ 25.30–80 Location and number of fire extinguishers required for vessels constructed prior to August 22, 2016.

Vessels contracted for prior to August 22, 2016 must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities smaller than what is required in tables 25.30–20(a)(1) and 25.30–20(b)(1) of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

PART 27—TOWING VESSELS

■ 26. The authority citation for part 27 continues to read as follows:

Authority: 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104–324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1.

■ 27. Add § 27.103 to subpart A to read as follows:

§ 27.103 Preemption.

The regulations in this part have preemptive effect over State or local regulations in the same field.

■ 28. Amend § 27.203 as follows:

■ a. Redesignate the introductory text and paragraphs (a),(b),and (c) as (a) introductory text and (a)(1) through (3), respectively;

■ b. Remove the word "fire-detection" wherever it appears and add, in its place, the words "fire detection";

■ c. In newly redesignated paragraph (a)(1), after the words "each detector must be listed by", remove the words "an independent testing laboratory" and add, in their place, the words "a nationally recognized testing laboratory (NRTL), as defined in 46 CFR 161.002–2, for fire service";

■ d. Redesignate paragraph (d) introductory text as paragraph (a)(4) and redesignate paragraphs (d)(1) through (5) as (a)(4)(i) through (v), respectively;

■ e. Redesignate paragraphs (e) through (g) as paragraphs (a)(5) through (7), respectively;

■ f. In newly designated paragraph (a)(7), remove the words "Registered Professional Engineer" and add, in their place, the words "registered professional engineer"; and remove the words "paragraphs (a) through (f)" and add, in their place, the words "paragraphs (a) introductory text and (a)(1) through (a)(6)"; and

■ g. Add new paragraph (b) to read as follows:

§ 27.203 What are the requirements for fire detection on towing vessels?

* * * * *

(b) In spaces other than the engine room, non-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed by a nationally recognized testing laboratory (NRTL) as set forth in 29 CFR 1910.7, and is designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance; and

(2) The system and units remain functional as intended.

§ 27.303 [Amended]

■ 29. In § 27.303(b)(1), remove the text "B–V semi-portable fire-extinguishing system" and add, in its place, the text "160–B or 100 lb. CO_2 extinguisher, regardless of rating,".

§ 27.305 [Amended]

■ 30. In § 27.305(a)(2), remove the text "B–V semi-portable fire-extinguishing system" and add, in its place, the text "160–B or 100 lb. CO_2 extinguisher, regardless of rating,".

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 31. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 8103, 10603; Department of Homeland Security Delegation No. 0170.1.

■ 32. Revise § 28.155 to read as follows:

§ 28.155 Excess fire detection and protection equipment.

(a) Use of non-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed and labeled by an independent, nationally recognized testing laboratory (NRTL) as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance; and

(2) The system and units remain functional as intended.

(b) The regulations in this section have preemptive effect over State or local regulation within the same field.

■ 33. Amend § 28.160 as follows:
■ a. Add paragraphs (c), (d), and (e); and
■ b. Revise table 28.160 to read as follows:

§ 28.160 Portable fire extinguishers.

* * * * *

(c) Semi-portable extinguishers must be located in the open so as to be readily seen.

(d) Table 28.160 of this section indicates the minimum required classification for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

(e) The regulations in this section have preemptive effect over State or local regulation within the same field.

TABLE 28.160—PORTABLE FIRE EXTINGUISHERS FOR VESSELS 65 FEET (19.8 METERS) OR MORE IN LENGTH

Space	Minimum required rating	Quantity and location
Safety areas, communicating corridors	2–A	1 in each main corridor not more than 150 ft (45.7m) apart. (May be located in stairways.)
Pilothouse	20–B:C	2 in the vicinity of the exit.
Service spaces, galleys	40–B:C	1 for each 2,500 sq ft (232.2 sq m) or fraction thereof suitable for hazards involved.
Paint lockers	40–B	1 outside space in the vicinity of the exit.
Accessible baggage and storerooms	2–A	1 for each 2,500 sq ft (232.2 sq m) or fraction thereof located in the vicinity of the exits, either inside or outside the spaces.
Workshops and similar spaces	2–A	1 outside the space in the vicinity of the exit.
Machinery spaces; Internal combustion propelling machinery	40–B:C	1 for each 1,000 brake horsepower or fraction thereof but not fewer than 2 or more than 6.
Electric propulsion motors or generator unit of open type	40–B:C	1 for each propulsion motor generator unit.
Auxiliary spaces	40–B:C	1 outside the space in the vicinity of the exit.
Internal combustion machinery	40–B:C	1 outside the space in the vicinity of the exit.
Electric emergency motors or generators	40–B:C	1 outside the space in the vicinity of the exit.

■ 34. Amend § 28.325 as follows:
■ a. Revise the section heading;
■ b. In paragraph (a), remove the words ", subpart 76.33"; and
■ c. Add paragraph (c).

The revision and addition read as follows:

§ 28.325 Fire detection and alarm systems.

* * * * *

(c) The regulations in this section have preemptive effect over State or local regulation within the same field.

■ 35. Amend § 28.830 as follows:
■ a. Revise the section heading;
■ b. In paragraph (a), after the words "or a smoke actuated", remove the words "fire detecting" and add, in their place, the words "fire detection"; and after the words "in accordance with", remove the text "§ 76.33 of this chapter" and add, in its place, the text "46 CFR part 76"; and
■ c. Add paragraph (c).

The revision and addition read as follows:

§ 28.830 Fire detection and alarm systems.

* * * * *

(c) The regulations in this section have preemptive effect over State or local regulation within the same field.

PART 30—GENERAL PROVISIONS

■ 36. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Department of Homeland Security Delegation No. 0170.1(II)(92)(a), (92)(b).

■ 37. Amend § 30.01–1 to remove the designation "(a)" and to add, at the end of the section, a sentence to read as follows:

§ 30.01–1 Purpose of regulations.

* * * The regulations in this subchapter (parts 30, 31, 32, 34, 35, 36, 38 and 39) have preemptive effect over state or local regulations in the same fields.

PART 31—INSPECTION AND CERTIFICATION

■ 38. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

■ 39. Add § 31.01–2 to read as follows:

§ 31.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_*

register/code_of_federal_regulations/ibr_locations.html.

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 31.10–18(a).

(2) [Reserved]

■ 40. Revise § 31.10–18 to read as follows:

§ 31.10–18 Fire fighting equipment: General—TB/ALL.

(a) The owner, master, or person-in-charge of a tank vessel must ensure that portable and semi-portable extinguishers are inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 31.01–2) as specified in paragraphs (a)(1) through (4) of this section.

(1) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(2) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(3) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(4) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records has not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(b) The owner, master, or person-in-charge of a tank vessel must ensure that the following tests and inspections of fixed fire extinguishing equipment are made:

TABLE 31.10–18(b)—TESTING OF FIXED FIRE EXTINGUISHING SYSTEMS

Type system	Test
Foam	Systems utilizing a soda solution must have the solution replaced. In all cases, ascertain that the powder is not caked
Carbon dioxide	Weigh cylinders. Recharge if weight loss exceeds 10 percent of weight of charge.[1]

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide and Halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

(c) Deck foam systems must be tested at the inspection for certification and the periodic inspection by discharging foam for approximately 15 seconds from any nozzle designated by the marine inspector. It is not required to deliver foam from all foam outlets, but all lines and nozzles must be tested with water to prove they are clear of obstruction. Before the inspection for certification and periodic inspection of deck foam systems utilizing a mechanical foam system, a representative sample of the foam concentrate must be submitted to the manufacturer who will issue a certificate indicating gravity, pH, percentage of water dilution, and solid content.

(d) At each inspection for certification, periodic inspection, and at such other times as considered necessary, the inspector must determine that all fire extinguishing equipment is in suitable condition and that the tests and inspections required by paragraphs (b) through (g) of this section have been conducted. In addition, the marine inspector may require additional tests to determine the condition of the equipment.

(e) On all fire extinguishing systems, the piping, controls, valves, and alarms must be checked by the marine inspector to determine that the system is in good operating condition.

(f) The fire main system must be operated and the pressure checked at the most remote and highest outlets by the marine inspector. All firehoses must be exposed to a test pressure equivalent to the maximum pressure to which they may be subjected, but not less than 100 psi. The marine inspector must check that the hose couplings are securely fastened in accordance with the regulations of this subchapter.

(g) Steam smothering lines must be tested with at least 50 psi of air pressure or by blowing steam through the lines at the working pressure. A survey must be conducted for detecting corrosion and defects.

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

■ 41. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

■ 42. Add paragraph (d) to § 32.01–1 to read as follows:

§ 32.01–1 Incorporation by reference.

* * * * *

(d) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for § 32.56–1(b).

(2) [Reserved]

■ 43. Revise § 32.56–1(b) to read as follows:

§ 32.56–1 Application.

* * * * *

(b) Vessels meeting the structural fire protection requirements of SOLAS, Chapter II–2, Regulations 5, 6, 8, 9, and 11 (incorporated by reference, see § 32.01–1), may be considered equivalent to the provisions of this subpart.

PART 34—FIRE FIGHTING EQUIPMENT

■ 44. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 45. Revise the heading to part 34 to read as set forth above.

■ 46. Amend § 34.01–5 as follows:

■ a. In paragraph (a), remove the word "shall" and add, in its place, the word "must"; and

■ b. Add paragraph (b) to read as follows:

§ 34.01–5 Equipment installed but not required—TB/ALL.

* * * * *

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that:

(1) Components are listed and labeled by an independent, nationally recognized testing laboratory (NRTL) as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

■ 46. Revise § 34.01–15(c)(1) to read as follows:

§ 34.01–15 Incorporation by reference.

* * * * *

(c) * * *

(1) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 34.30–1.

* * * * *

■ 47. Revise § 34.30–1 to read as follows:

§ 34.30–1 Application—TB/ALL.

Automatic sprinkler systems must comply with Chapter 25 of NFPA 13 (incorporated by reference, see § 34.01–15).

■ 48. Revise § 34.50–1 to read as follows:

§ 34.50–1 Application—TB/ALL.

(a) The provisions of this subpart, with the exception of §§ 34.50–80 and 34.50–90, must apply to all vessels contracted for on or after August 22, 2016.

(b) Vessels contracted for prior to August 22, 2016 but on or after January 1, 1962, must meet the requirements of § 34.50–80.

(c) All vessels contracted for prior to January 1, 1962, must meet the requirements of § 34.50–90.

§ 34.50–5 [Removed]

■ 49. Remove § 34.50–5.

■ 50. Revise § 34.50–10 to read as follows:

§ 34.50–10 Location, number, and installation of fire extinguishers—TB/ALL.

(a) Approved portable and semi-portable extinguishers must be installed in accordance with table 34.50–10(a) of this section. The location of the equipment must be, in the opinion of the Officer in Charge, Marine Inspection, convenient in case of emergency. Where special circumstances exist, not covered by table 34.50–10(a) of this section, the Officer in Charge, Marine Inspection, may require additional equipment as deemed necessary for the proper protection of the vessel.

(b) For additional portable extinguishers as a substitute for sand, see § 34.55–10.

(c) Semi-portable extinguishers must be located in the open so as to be readily seen.

(d) If portable extinguishers are not located in the open or behind glass so that they may be readily seen they may be placed in enclosures together with the firehose, provided such enclosures are marked as required by § 35.40–25 of this subchapter.

(e) Portable extinguishers and their stations must be numbered in accordance with § 35.40–25 of this subchapter.

(f) Portable or semi-portable extinguishers which are required by their nameplates to be protected from freezing must not be located where freezing temperatures may be expected.

(g) Semi-portable extinguishers must be fitted with a suitable hose and nozzle, or other practicable means, so that all portions of the space concerned can be protected.

(h) Table 34.50–10(a) of this section indicates the minimum required number and type for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 34.50–10(a)—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS

Tank ships		Area	Tank barges	
Quantity and location	Minimum required rating		Minimum required rating	Quantity and location
		Safety Areas		
1 required	20–B:C	Wheelhouse and chartroom area		None required.
1 required in the vicinity of the exit.	20–B:C[1]	Radio room		None required.
		Accommodation Areas		
1 required in each main passageway on each deck, conveniently located, and so that no room is more than 75 ft from an extinguisher.	2–A	Staterooms, toilet spaces, public spaces, offices, etc., and associated lockers, storerooms, and pantries.	2–A	1 required in the vicinity of the exit.
		Service Areas		
1 required for each 2,500 sq ft or fraction thereof.	40–B:C	Galleys	40–B:C	1 required, suitable for the hazard involved.
1 required for each 2,500 sq ft or fraction thereof.	40–A:B	Stores areas, including paint and lamp rooms.		None required.

TABLE 34.50–10(a)—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS—Continued

Tank ships		Area	Tank barges	
Quantity and location	Minimum required rating		Minimum required rating	Quantity and location
		Machinery Area[2]		
2 required[3]	40–B	Spaces containing oil fired boilers, either main or auxiliary, or any fuel oil units subject to the discharge pressure of the fuel oil service pump.	40–B	1 required.[12]
1 required	and 160–B[4]			
1 required for each 1,000 brake horsepower; not less than 2, not more than 6[5].	40–B	Spaces containing internal combustion or gas turbine propulsion machinery.		None required.
1 required[6,7]	and 120–B.			
1 required in the vicinity of the exit[7].	40–B	Auxiliary spaces containing internal combustion or gas turbine units.	40–B	1 required in the vicinity of the exit.[7,9,12]
1 required in the vicinity of the exit[8].	40–B:C	Auxiliary spaces containing emergency generators.		None required.
		Cargo Areas		
1 required in the lower pumproom.	40–B	Pumprooms	40–B	1 required in the vicinity of the exit.[9,12]
None required		Cargo tank area	40–B	2 required.[10,12,13]
			160–B	1 required.[9,11]
		Spare Units		
10 percent of required units rounded up.	2–A		2–A	10 percent of required units rounded up.
10 percent of required units rounded up.	40–B:C		40–B:C	10 percent of required units rounded up.

[1] Vessels not on an international voyage may substitute two 5–B:C rated extinguishers.

[2] A 40–B:C must be immediately available to the service generator and main switchboard areas, and further, a 40–B:C must be conveniently located not more than 50 feet (15.25 meters) walking distance from any point in all main machinery operating spaces. These extinguishers need *not* be in addition to other required extinguishers.

[3] Vessels of fewer than 1,000 GT require 1.

[4] Vessels of fewer than 1,000 GT may substitute 1 120–B:C.

[5] Only 1 required for vessels under 65 ft in length.

[6] If an oil-burning donkey boiler is fitted in the space, the 160–B:C previously required for the protection of the boiler may be substituted. Not required where a fixed carbon dioxide system is installed.

[7] Not required on vessels of fewer than 300 GT if the fuel has a flashpoint higher than 110 °F.

[8] Not required on vessels of fewer than 300 GT.

[9] Not required if fixed system installed.

[10] If no cargo pump on barge, only one 40–B:C required.

[11] Manned barges of 100 GT and over only.

[12] Not required on unmanned barges except during the transfer of cargo, or operation of barge machinery or boilers when the barge is not underway.

[13] An extinguisher brought on to unmanned barges during the transfer of cargo, or operation of barge machinery or boilers does not have to be Coast Guard approved, provided it is approved by a nationally recognized testing laboratory (NRTL) in accordance with 29 CFR 1910.7.

§ 34.50–15 [Removed]

■ 51. Remove § 34.50–15.

■ 52. Add § 34.50–80 to read as follows:

§ 34.50–80 Location and number of fire extinguishers required for vessels constructed prior to August 22, 2016–TB/ALL.

Vessels contracted for prior to August 22, 2016, must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities smaller than as required in table 34.50–10(a) need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

PART 50—GENERAL PROVISIONS

■ 53. The authority citation for part 50 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

■ 54. Amend § 50.01–15 by adding paragraph (c) to read as follows:

§ 50.01–15 Scope of regulations.

* * * * *

(c) The regulations in this subchapter (parts 50, 52, 53, 54, 56, 57, 58, 59, and 61 through 64) have preemptive effect over state or local regulations in the same field.

PART 56—PIPING SYSTEMS AND APPURTENANCES

■ 55. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 56. In § 56.01–2—
■ a. Revise paragraph (h)(1); and
■ b. Add paragraph (h)(2).

The addition and revision read as follows.

§ 56.01–2 Incorporation by reference.

* * * * *

(h) * * *

(1) Resolution A.753(18), Guidelines for the Application of Plastic Pipes on Ships, adopted on 4 November 1993 (“IMO Resolution A.753(18)”), IBR approved for 56.60–25(a).

(2) Resolution MSC.313(88), Amendments to the Guidelines for the Application of Plastic Pipes on Ships, adopted 26 November 2010 (“IMO Resolution MSC.313(88)”), IBR approved for § 56.60–25(a).

* * * * *

■ 57. In § 56.60–25—
■ a. Revise paragraph (a);
■ b. Revise paragraph (b)(5); and
■ c. In paragraphs (c) and (d), remove the word “shall” and add, in its place, the word “must”.

The revisions read as follows.

§ 56.60–25 Nonmetallic materials.

(a) Plastic pipe installations must be in accordance with IMO Resolution A.753(18) and IMO Resolution MSC.313(88) (both incorporated by reference, see § 56.01–2) and the following supplemental requirements.

(1) Plastic pipe and associated fittings must be approved to approval series 164.141 as follows:

(i) All piping, except pipe used on open decks, in cofferdams, void spaces, or ducts, must meet the flame spread requirements of Appendix 3 of IMO Resolution A.753(18).

(ii) Where fire endurance is required in Appendix 4 of IMO Resolution A.753(18) the pipe must, at a minimum, be approved as meeting the fire endurance level required in Appendix 4. Ratings of “0” in Appendix 4 indicate that no fire endurance test is required. Ratings of “N/A” or “X” indicate that plastic pipe is not permitted.

(iii) Piping in accommodation, service and control spaces must be approved for use in those spaces.

(2) Plastic pipe that has not been approved for use in accommodation, service and control spaces is permitted in a concealed space in an accommodation, service or control space, such as behind ceilings or linings or between double bulkheads if:

(i) The piping is enclosed in a trunk or duct constructed of “A” class divisions; or

(ii) An approved smoke detection system is fitted in the concealed space and each penetration of a bulkhead or deck and each installation of a draft stop is made in accordance with IMO Resolution A.753(18) and IMO Resolution MSC.313(88) to maintain the integrity of fire divisions.

(3) Requests for the use of plastic pipe for non-vital systems, as defined in 46 CFR 56.07–5, containing non-flammable or non-combustible liquids in locations that do not require fire endurance testing, as indicated in Appendix 4 of IMO Resolution A.753(18), must be submitted to the Marine Safety Center for review. The proposed piping must meet the following requirements:

(i) The length of pipe must be 30 inches or less;

(ii) The pipe must be contained within the space and does not penetrate any bulkhead, overhead or deck; and

(iii) Material specifications must be provided with the installation proposal.

(4) Pipe that is to be used for potable water must bear the appropriate certification mark of a nationally-recognized, ANSI-accredited third-party certification laboratory. Plastic pipe fitting and bonding techniques must follow the manufacturer’s installation guidelines. Bonders must hold certifications required by the manufacturer’s guidelines and provide documentation of current certification to the Marine Inspector when requested.

(5) Systems identified by § 56.97–40(a)(1) through (c) that contain plastic piping must be tested to 1.5 MAWP as required by § 56.97–40(a).

(6) Plastic pipe used outboard of the required metallic shell valve in any piping system penetrating the vessel’s shell (see § 56.50–95(f)) must have the same fire endurance as the metallic shell valve. Where the shell valve and the plastic pipe are in the same unmanned space, the valve must be operable from above the freeboard deck.

(7) Pipe that is to be used for potable water must bear the appropriate certification mark of a nationally-recognized, ANSI-accredited, third-party certification laboratory.

(8) Plastic pipe must also comply with appropriate requirements for specific uses and arrangements of pipe given elsewhere in this part.

(b) * * *

(5) Nonmetallic flexible hose must have factory-assembled end fittings requiring no further adjustment or field attachable fittings. Hose end fittings must comply with SAE J1475 (incorporated by reference, see § 56.01–2). Field attachable fittings must be installed following the manufacturer’s recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. A hydrostatic test of each hose assembly must be conducted in accordance with § 56.97–5.

* * * * *

PART 70—GENERAL PROVISIONS

■ 58. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, sec. 1–105; Department of Homeland Security Delegation No. 0170.1(II)(92)(a), (92)(b).

■ 59. Amend § 70.01–1 by adding, at the end of the section, a sentence to read as follows:

§ 70.01–1 Purpose of regulations.

* * * The regulations in this subchapter (parts 70, 71, 72, 76, 77, 78, and 80) have preemptive effect over State or local regulations in the same field.

PART 71—INSPECTION AND CERTIFICATION

■ 60. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3205, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 61. Add § 71.25–3 to read as follows:

§ 71.25–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition,

effective December 5, 2009, IBR approved for § 71.25–20(a).

(2) [Reserved]

§ 71.25–20 [Amended]

■ 62. Amend § 71.25–20 as follows:

■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. Revise section heading and paragraphs (a) introductory text and (a)(1).

■ c. In paragraph (a)(3), remove the word "detecting" wherever it appears and add, in its place, the word "detection"; and

■ e. In paragraph (a)(4), remove the words "fire hose" and add, in their place, the word "firehose".

The revisions read as follows:

§ 71.25–20 Fire detection and extinguishing equipment.

(a) At each annual inspection, the inspector must ensure that the following tests and inspections of fire detection and extinguishing equipment have been conducted:

(1) All portable fire extinguishers and semi-portable fire extinguishing systems must be maintained in accordance with NFPA 10, chapter 7 (incorporated by reference, see § 71.25–3). Chapter 7 requires persons performing annual and periodic maintenance, and recharging to be certified. The Coast Guard requires that the servicing persons be properly licensed to perform fire extinguisher maintenance as required by local authorities having jurisdiction. Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

* * * * *

PART 72—CONSTRUCTION AND ARRANGEMENT

■ 63. The authority citation for part 72 continues to read as follows:

> **Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 64. Add § 72.01–2 to read as follows:

§ 72.01–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for § 72.05–1(c).

(2) [Reserved]

■ 65. Revise § 72.05–1 to read as follows:

§ 72.05–1 Application.

(a) The provisions of this subpart apply to the following vessels:

(1) All vessels of 100 gross tons or more.

(2) All vessels with overnight accommodations for more than 150 passengers.

(3) All vessels on an international voyage.

(b) The provisions of this subpart, with the exception of § 72.05–90, apply to all vessels noted in paragraph (a) of this section contracted for on or after May 26, 1965. Such vessels contracted for prior to May 26, 1965, must meet the requirements of § 72.05–90.

(c) Vessels meeting the structural fire protection requirements of SOLAS, Chapter II–2, Regulations 5, 6, 8, 9, and 11 (incorporated by reference, see § 72.01–2), when combined with the stair requirements in § 72.05–20 may be considered equivalent to the provisions of this subpart.

(d) Vessels regulated under subchapter K of this chapter which carry more than 600 passengers or with overnight accommodations for more than 49 passengers must also meet the requirements for stairways, ladders and elevators in § 72.05–20 (see 46 CFR 116.438(a)).

PART 76—FIRE PROTECTION EQUIPMENT

■ 66. The authority citation for part 76 continues to read as follows:

> **Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 67. In § 76.01–2—

■ a. Redesignate paragraph (c) and (d) as (d) and (e);

■ b. Add new paragraph (c);

■ c. Revise redesignated paragraph (d)(1); and

■ d. Add new paragraph (d)(2);

The additions and revision read as follows:

§ 76.01–2 Incorporation by reference.

* * * * *

(c) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for §§ 76.27–1(b) and 76.27–70 introductory text, (a) through (d) and (j).

(2) FSS Code, International Code for Fire Safety Systems, Second Edition, 2007 Edition (Resolution MSC.98(73)), IBR approved for §§ 76.27–1(b) and 76.27–70 introductory text, and (e) through (j).

(3) Resolution A.1021(26), Code on Alerts and Indicators, 2009, adopted on 2 December 2009 ("IMO Resolution A.1021(26)"), IBR approved for § 76.27–70(j).

(d) * * *

(1) NFPA 13–1996, Standard for the Installation of Sprinkler Systems, IBR approved for § 76.25–90.

(2) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 76.25–1.

* * * * *

■ 68. Revise § 76.01–5 to read as follows:

§ 76.01–5 Equipment installed but not required.

(a) Where extinguishing systems or equipment are not required, but are installed, the system or equipment and its installation must meet the requirements of this part.

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that:

(1) Components are listed by a nationally recognized testing laboratory (NRTL) as that term is defined in 46 CFR 161.002–2, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

■ 69. Revise § 76.05–1 to read as follows:

§ 76.05–1 Fire detection and alarm systems.

(a) Approved fire detection and alarm systems must be installed on the following vessels as set forth in subpart 76.27 of this part:

(1) Any vessel on an international voyage;

(2) Any vessel of more than 150 feet (45.72 meters) in length having sleeping accommodations for passengers; and

(3) Any vessel of 150 feet (45.72 meters) or less in length, not on an international voyage, having sleeping accommodations for 50 or more passengers. Vessels in this category are not required to have a fire detection system in the cargo spaces.

(b) The arrangements and details of the fire detection systems must be as set forth in subparts 76.25 through 76.33 of this part.

■ 70. Revise § 76.05–5 to read as follows:

§ 76.05–5 Manual alarm system.

(a) An approved manual alarm system must be installed in all vessels as set forth in subpart 76.27 of this part.

(b) [Reserved]

§ 76.05–10 [Amended]

■ 71. In § 76.05–10(a), remove the word "shall" and add, in its place, the word "must".

■ 72. Revise § 76.05–20 to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems must be installed, as required by Table 76.05–20 on all self-propelled vessels and on all barges with sleeping accommodations for more than six persons. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

TABLE 76.05–20—REQUIRED FIXED EXTINGUISHING SYSTEMS

Space	Fixed extinguishing systems
Safety Areas	
Wheelhouse or fire-control room	None required.[1]
Stairway and elevator enclosures	None required.[1]
Communication corridors	None required.[1]
Lifeboat embarkation and lowering stations	None required.
Radio room	None required.[1]
Accommodations	
Staterooms, toilet spaces, isolated pantries, etc	None required.[1]
Offices, lockers, and isolated storerooms	None required.[1]
Public spaces	None required.[1]
Open decks or enclosed promenades	None required.
Service Spaces	
Galleys	None required.[1]
Main pantries	None required.[1]
Motion picture booths and film lockers	None required.[1,2]
Paint and lamp rooms	Carbon dioxide.[3]
Inaccessible baggage, mail, and specie rooms and storerooms	Carbon dioxide.[3]
Accessible baggage, mail, and specie rooms and storerooms	None required.[1]
Refrigerated storerooms	None required.
Carpenter, valet, photographic, and printing shops, sales rooms, etc	None required.[1]
Machinery spaces	
Coal fired boilers: Bunker and boiler space	None required.[1]
Oil fired boilers: Spaces containing oil fired boilers either main or auxiliary, their fuel oil service pumps, and/or such other fuel oil units as the heaters, strainers, valves, manifolds, etc., that are subject to the discharge pressure of the fuel oil service pumps, together with adjacent spaces to which oil can drain.	Carbon dioxide or foam.[4]
Internal combustion or gas turbine propelling machinery spaces	Carbon dioxide.[5]
Electric propulsive motors or generators of open type	None required.
Enclosed ventilating systems for motors and generators of electric propelling machinery	Carbon dioxide (in ventilating system).[6]
Auxiliary spaces, internal combustion or gas turbine	Carbon dioxide.[7]
Auxiliary spaces, electric motors or generators	None required.
Auxiliary spaces, steam	None required.
Trunks to machinery spaces	None required.
Fuel tanks	None required.[8]
Cargo Spaces	
Inaccessible during voyage (combustible cargo), including trunks (excluding tanks)	Carbon dioxide.[3]
Accessible during voyage (combustible cargo)	Automatic or manual sprinkler system.
Vehicular deck (except where no overhead deck is 30 feet (9.14 meters) in length or less)	Manual sprinkler.
Cargo oil tanks	Carbon dioxide or foam.[3]

TABLE 76.05–20—REQUIRED FIXED EXTINGUISHING SYSTEMS—Continued

Space	Fixed extinguishing systems
Specially suitable for vehicles	Carbon dioxide, automatic or manual sprinkler system.

[1] Vessels of 100 GT or more contracted for on or before May 27, 1936, and having combustible joiner work must be fitted with an automatic sprinkler system, except in relatively incombustible spaces.

[2] Sprinkler heads may be attached to a potable water system provided electrical or pneumatic detecting is installed.

[3] On vessels contracted for prior to January 1, 1962, a steam smothering system may be accepted. However, although existing steam smothering systems may be repaired, replaced, or extended, no new system contracted for on or after January 1, 1962, will be permitted.

[4] Protection of auxiliary boilers, fuel oil units, valves, and manifolds not required on vessels contracted for prior to November 19, 1952.

[5] Not required on vessels of less than 300 GT (except on an international voyage) using fuel with a flashpoint higher than 110 °F, where the space is normally manned.

[6] Not required on vessels contracted for prior to November 19, 1952.

[7] Not required on vessels of less than 300 GT or on vessels contracted for prior to November 19, 1952, except where fuel, including starting fuel, has a flashpoint of 110 °F or less.

[8] Where fuel having a flashpoint of 110 °F or lower is used the space containing the fuel tanks must be protected by a carbon dioxide system.

§ 76.10–5 [Amended]

■ 73. Amend § 76.10–5 as follows:

■ a. In paragraph (a), remove the word "shall" and add, in its place, the word "must"; and

■ b. In Table 76.10–5(a), footnote 1, remove the words "75 feet of 1½-inch hose and ⅝-inch nozzles may be used where specified" and add, in their place, the words "Except as allowed".

■ 74. Revise § 76.10–10 to read as follows:

§ 76.10–10 Fire station hydrants, hose and nozzles

(a) The size of fire hydrants, hoses, and nozzles, and the length of hose required, must be as specified in Table 76.10–5(a) of this subpart.

(b) On vessels of more than 1,500 gross tons, the 2½-inch hose and hydrants specified in Table 76.10–5(a) may be replaced with 1½-inch hose and hydrants as follows:

(1) The hydrants in interior locations may have wye connections for 1½-inch hose. In these cases, the hose must be 75 feet (22.86 meters) in length, and only one hose will be required at each fire station; however, if every interior space can be reached by a 50-foot hose then 50-foot hoses may be installed at each interior fire hydrant; and

(2) The hydrants for external locations may consist of two 1½-inch outlets, each with a 1½-inch hose, supplied through a wye connection as a substitute.

(c) On vessels of 500 gross tons or more, there must be at least one shore connection to the fire main available to each side of the vessel in an accessible location. Suitable cut-out valves and check valves must be provided. Suitable adaptors also must be provided for furnishing the vessel's shore connections with couplings mating those on the shoreside fire lines. Vessels of 500 gross tons or more on an international voyage must be provided with at least one international shore connection complying with ASTM F 1121 (incorporated by reference, see § 76.01–2). Facilities must be available that enable an international shore connection to be used on either side of the vessel.

(d) Fire hydrants must be of sufficient number and so located that any part of the vessel accessible to the passengers or crew while the vessel is being navigated, other than main machinery spaces and cargo holds, may be reached with at least two streams of water from separate outlets, at least one of which must be from a single length of hose. All areas of the main machinery spaces and cargo holds must be capable of being reached by at least two streams of water, each of which must be from a single length of hose from separate outlets. This requirement need not apply to shaft alleys containing no assigned space for the stowage of combustibles. Fire hydrants must be numbered as required by § 78.47–20 of this subchapter.

(e) All parts of the fire main located on exposed decks must either be protected against freezing or be fitted with cut-out valves and drain valves so that the entire exposed parts of such piping may be shut off and drained in freezing weather. Except when closed to prevent freezing, such valves must be sealed open.

(f) The outlet at each fire hydrant must be provided with a cock or valve fitted in such a position that the firehose may be removed while the fire main is under pressure. In addition, the outlet must be limited to any position from the horizontal to the vertical pointing downward, so that the hose will lead horizontally or downward to minimize the possibility of kinking.

(g) Each fire hydrant must have at least one length of firehose, a spanner wrench, and a hose rack or other device for stowing the hose.

(h) Firehoses must be connected to the outlets at all times. However, on open decks where no protection is afforded to the hose in heavy weather, or where the hose may be liable to damage from the handling of cargo, the hose may be temporarily removed from the hydrant and stowed in an accessible nearby location.

(i) A firehose must not be used for any purpose other than fire extinguishing and fire drills.

(j) Each firehose on each hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements in 46 CFR 162.027. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(k) Straight stream firehose nozzles approved under 46 CFR 162.027 must have low-velocity water spray applicators for—

(1) Two firehoses within the accommodation and service areas; and

(2) Each firehose within propulsion machinery spaces containing an oil-fired boiler, internal combustion machinery, or an oil fuel unit on a vessel on an international voyage or on any vessel of 1,000 gross tons or more. The length of each applicator must be not more than 1.8 meters (6 feet).

(l) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (k) of this section.

(m) Fire hydrants, nozzles, and other fittings must have threads to accommodate the hose connections noted in paragraph (l) of this section.

(n) Firehose and couplings must be as follows:

(1) Fire station hydrant connections must be brass, bronze, or other equivalent metal. Couplings must either—

(i) Use National Standard (NS) firehose coupling threads for the 1½-in

(38-mm) and 2½-in (64-mm) hose sizes, *i.e.*, 9 threads per inch for a 1½-in hose, and 7½ threads per inch for a 2½-in hose; or

(ii) Be a uniform design for each hose diameter throughout the vessel.

(2) Each section of firehose must be a lined commercial firehose that conforms to UL 19 (incorporated by reference, see § 76.01–2). A hose that bears the label of UL as a lined firehose is accepted as conforming to this requirement.

■ 75. Revise § 76.25–1 to read as follows:

§ 76.25–1 Application.

Automatic sprinkler systems must comply with Chapter 25 of NFPA 13 (incorporation by reference, see § 76.01–2).

§§ 76.25–5 through 76.25–35 [Removed]

■ 76. Remove and reserve §§ 76.25–5 through 76.25–35.

■ 77. Revise subpart 76.27, consisting of §§ 76.27–1 through 76.27–90, to read as follows:

Subpart 76.27—Fire Detection and Alarm System, Details

Sec.

76.27–1 Application.
76.27–5 General.
76.27–10 Operation.
76.27–15 Detectors.
76.27–20 Alarm indicators.
76.27–25 Power and circuitry.
76.27–30 Zoning.
76.27–35 Installation.
76.27–70 Application of SOLAS and FSS Code.
76.27–80 Installations contracted for on or after November 19, 1952, and prior to July 22, 2021.
76.27–90 Installations contracted for prior to November 19, 1952.

Subpart 76.27—Fire Detection and Alarm System, Details

§ 76.27–1 Application.

(a) Where a fire detection and alarm system is installed, the provisions of this subpart, with the exception of §§ 76.27–80 and 76.27–90, apply to all installations contracted for on or after July 22, 2021. Installations contracted for on or after November 19, 1952, and prior to July 22, 2021 must meet the requirements of § 76.27–80. Installations contracted for prior to November 19, 1952, must meet the requirements of § 76.27–90.

(b) The design, manufacture, installation, and operation of fire detection and alarm systems must be in accordance with either:

(1) Sections 76.27–5 through 76.27–35; or

(2) SOLAS Chapter II–2, Regulation 7 and FSS Code Chapter 9 (both incorporated by reference, see § 76.01–2) as detailed in § 76.27–70.

§ 76.27–5 General.

(a) Detectors, manual alarm stations, control panels, cabinets, alarms, and other notifying devices must be of approved types.

(b) The fire detection and alarm system must be capable of immediate operation at all times that the vessel is in service.

(c) The fire detection and alarm system must control and monitor input signals for all connected detectors and manual pull stations or call points.

(d) The fire detection and alarm system must provide fire or fault output signals to the pilothouse or fire control station.

(e) The fire detection and alarm system must notify crew and passengers of a fire when appropriate.

(f) The fire detection and alarm system must be so arranged and installed that the presence of a fire in any of the protected spaces will be automatically registered visibly and audibly in the pilothouse or fire control station. The visible notice must indicate the zone in which the alarm originated. On vessels of more than 150 feet (45.72 meters) in length, there must also be an audible alarm in the engine room.

§ 76.27–10 Operation.

(a) Means to manually acknowledge all alarm and fault signals must be provided at the control panel. The audible alarm on the control panel may be manually silenced. The control panel must clearly distinguish between normal, alarm, acknowledged alarm, fault, and silence conditions.

(b) The activation of any detector or manual pull station must cause an audible and visual fire detection alarm signal at the control panel. If the alarm signal has not been acknowledged within 2 minutes, an audible fire alarm must be automatically sounded throughout the crew accommodations and service spaces, control stations, and manned machinery spaces.

(c) A fire detection and alarm system must automatically reset to a normal operating condition after alarm and fault situations are cleared.

(d) Detectors in certain spaces, such as workshops during hot work and ro-ro spaces during on- and off-loading, may be disabled. The system must be restored automatically to normal surveillance after a predetermined time. Spaces must be manned when any detectors are disabled. Detectors in all other spaces must remain operational.

(e) In fire detection and alarm systems with addressable detectors and manual pull stations, every fault (such as an open circuit, short circuit, or ground fault) must be monitored and must not prevent the continued individual identification of the remaining detectors and manual pull stations.

(f) In fire detection and alarm systems with addressable detectors and manual alarm stations, the initiation of the first fire detector and resulting alarm must not prevent any other detector from responding.

(g) Fire detection and alarm systems without addressable detectors and manual alarm stations must identify the zone that contains the activated detector or station upon activation of a detector or manual pull station.

(h) Fire detection and alarm systems may output signals to other fire safety systems including, but not limited to, paging systems, fire alarm or public address systems, fan stops, fire doors, fire dampers, sprinkler systems, smoke extraction systems, low-location lighting systems, fixed local application fire extinguishing systems, and closed-circuit television systems.

(i) Fire detection and alarm systems may accept signals from other safety systems. For example, a signal initiated from actuation of an automatic sprinkler valve may be sent to a fire detection and alarm system.

(j) The fire detection and alarm system may be connected to a decision management system provided that—

(1) The decision management system is compatible with the fire detection and alarm system;

(2) The decision management system can be disconnected without affecting the performance of the fire detection and alarm system; and

(3) Any malfunction of the interfaced and connected decision management equipment must not render the fire detection and alarm system ineffective.

§ 76.27–15 Detectors.

(a) Detectors must be responsive to heat, smoke, or other products of combustion, flame, or any combination of these factors. Detectors responsive to other indicators of incipient fires may be used if approved.

(b) Detectors must be capable of being triggered or tested and restored to service without the replacement of any component.

(c) Heat detectors must be rated not lower than 130 °F (54 °C) and not higher than 172 °F (78 °C). The operating temperature of heat detectors located in spaces of high normal ambient temperatures may be up to 260 °F (130 °C). The operating temperatures of heat detectors in saunas may be up to 284 °F (140 °C).

(d) Fire detectors fitted in passenger cabins must also emit, or cause to be emitted, an audible alarm within the cabin when activated.

(e) The required sensitivity and other performance criteria of detectors must be as set forth in 46 CFR 161.002.

§ 76.27–20 Alarm indicators.

(a) Audible alarms must generate sound pressure levels as set forth in 46 CFR 161.002 and must:

(1) Be at least 75 dBA as measured at the sleeping position in cabins;

(2) Be at least 10 dBA above ambient noise levels existing during normal operation with the ship under way in moderate weather when measured at a point 5 feet (1.5 meters) above the finished floor and at least 3 feet (1 meter) from the source;

(3) Not exceed 120 dBA; and

(4) The sound pressure level must be measured in the third octave band about the fundamental frequency.

(b) Visual alarms must generate light of an intensity and period as set forth in 46 CFR 161.002.

(c) All audible and visual alarms must be audible and visible throughout the spaces they are intended to alert.

§ 76.27–25 Power and circuitry.

(a) The power supply and emergency power supply for all fire detection and alarm systems must be in accordance with 46 CFR chapter I, subchapter J (Electrical Engineering). At the end of the required period for which the fire detection and alarm system must remain operable under emergency power, the system must remain capable of operating all audible and visual fire alarm signals for an additional period of 30 minutes.

(b) All wiring and electrical circuits and equipment must be in accordance with 46 CFR chapter I, subchapter J (Electrical Engineering).

(c) All fire detection and alarm systems must monitor power supplies and circuits necessary for the operation of the system during loss of power and fault conditions.

§ 76.27–30 Zoning.

(a) The fire detection system must be divided into separate zones to restrict the area covered by any particular alarm signal.

(b) The fire detection zone must not include spaces in more than one main vertical zone, except on cabin balconies.

(c) The fire detection zone must not include spaces on more than one deck, except—

(1) Adjacent and communicating spaces on different decks at the ends of the vessel having a combined ceiling area of not more than 3,000 sq ft;

(2) Isolated rooms or lockers in such spaces as mast houses or wheelhouse tops, which are easily communicable with the area of the fire detection circuit to which they are connected; and

(3) Systems with addressable detectors and manual alarm stations that can have their status individually determined.

(d) Any fire detection zone with non–addressable detectors and manual pull stations must not contain more than 25 protected rooms or spaces.

§ 76.27–35 Installation.

(a) Detectors must be located in all spaces except those having little or no fire risk such as void spaces with no stowage of combustibles, private bathrooms, public toilets, fire extinguishing medium storage rooms, deck spaces, and enclosed promenades that are naturally ventilated by permanent openings.

(b) The detectors must be located on the overhead in the space protected at a minimum distance of 18 in (0.5 m) away from bulkheads, except in corridors, lockers, and stairways. Positions near beams and ventilation ducts, or other positions where patterns of air flow could adversely affect performance should be avoided. Where liable to physical damage, the detector must be suitably protected.

(c) Detectors must be located in accordance with spacing requirements as tested and approved.

(d) Detectors in stairways must be located at least at the top level of the stairs and at every second level beneath.

(e) There must be at least one manual alarm station in each zone.

(f) Manual alarm stations must be located in main passageways, stairway enclosures, public spaces, or similar locations where they will be readily available and easily seen in case of need.

(g) A sufficient number of manual alarm stations must be employed to enable a person escaping from any space to find a manual alarm station on his or her normal escape route.

(h) Cables that form part of a fire detection and alarm system must be arranged to avoid galleys and machinery and other high fire risk spaces except where it is necessary to provide for fire detection and alarms in such spaces or to connect to an appropriate power supply.

(i) Clear information about the installation and operation of a fire detection and alarm system must be displayed on or adjacent to its control panels.

(j) The audible alarms must be identified as required by § 78.47–13 of this subchapter.

(k) The entire main vertical zone containing an atrium must be protected throughout with smoke detectors.

§ 76.27–70 Application of SOLAS and FSS Code.

When the design, manufacture, installation, and operation of a fire detection and alarm system is to be in accordance with SOLAS Chapter II–2, Part C, Regulation 7 and FSS Code Chapter 9 (both incorporated by reference, see § 76.01–2) as allowed by § 76.27–1(b)(2), the following requirements apply:

(a) The periodic testing of fire detection and alarm systems required in SOLAS Chapter II–2, Regulation 7.3.2 must be conducted as part of the annual inspection mandated in subpart 71.25 of this subchapter.

(b) Control stations must be included among the spaces to be protected by a fire detection and alarm system under SOLAS Chapter II–2, Regulation 7.5.3.

(c) The Commanding Officer of the U.S. Coast Guard Marine Safety Center will determine whether a cargo space in a passenger vessel is inaccessible and whether or not it is reasonable to provide fire detection for the space under SOLAS Chapter II–2, Regulation 7.6.

(d) The Commanding Officer of the U.S. Coast Guard Marine Safety Center will determine whether or not there is risk of fire originating in concealed and inaccessible places that otherwise would require access of a fire patrol under SOLAS Chapter II–2, Regulation 7.8.2.

(e) Any detectors operated by factors other than heat, smoke, or other products of combustion, or flame as addressed in FSS Code Chapter 9.2.3.1.1, may be used if they are approved types.

(f) Notwithstanding the provisions of FSS Code Chapter 9.2.3.1.2, the required sensitivity and other performance criteria of smoke detectors must be as set forth in 46 CFR 161.002.

(g) Notwithstanding the provisions of FSS Code Chapter 9.2.3.1.3, the required sensitivity and other performance criteria of heat detectors must be as set forth in 46 CFR 161.002.

(h) As addressed in FSS Code Chapter 9.2.4.1.3, when a fire detection and alarm system does not include means for identifying each detector individually, no section of detectors and manually operated call points may include more than 25 enclosed spaces.

(i) Notwithstanding the spacing set forth in FSS Code Chapter 9, Table 9.1, fire detectors must be placed in accordance with spacing requirements as tested and approved.

(j) Footnotes to SOLAS Chapter II–2, Regulation 7.9 and FSS Code Chapter 9.2.51 refer to the Code on Alarms and Indicators, 2009, as adopted by IMO Resolution A.1021(26) (incorporated by reference, see § 76.01–2). The provisions of the Code on Alarms and Indicators are recommended but not required under the option in § 76.27–1(b)(2).

§ 76.27–80 Installations contracted for on or after November 19, 1952 and prior to July 22, 2021.

Installations contracted for on or after November 19, 1952 and prior to July 22, 2021, must meet the following requirements:

(a) *Location and spacing of detectors.* (1) The detectors must be located close to the overhead in the space protected. Where prone to physical damage, the detector(s) must be suitably protected.

(2) Unless specifically approved otherwise, every point on the overhead of a protected space must be within 10 feet (3.05 meters) of a detector. Where beams or girders extend below the ceiling, or where the ceiling is installed at more than one level, the detectors must be so located as to be most effective.

(b) *Operation and installation.* (1) The system must be so arranged and installed that the presence of a fire in any of the protected spaces will be automatically registered visibly and audibly in the pilothouse or fire control station. The visible notice must indicate the zone in which the alarm originated. On vessels of more than 150 feet (45.72 meters) in length, there must also be an audible alarm in the engine room.

(2) The detectors, the fire detection cabinet, and alarms must be of an approved type.

(3) In general, the detectors must be rated not lower than 135 °F and not higher than 165 °F. However, in spaces where a high ambient temperature may be expected, detectors must be rated not lower than 175 °F and not higher than 225 °F.

(4) The fire detection system must be used for no other purpose, except that it may be integrated with the manual alarm system.

(5) All wiring and electrical circuits and equipment must meet the applicable requirements of 46 CFR chapter I, subchapter J (Electrical Engineering) of this chapter.

(6) A framed chart or diagram must be installed in the wheelhouse or control station adjacent to the detecting cabinet indicating the location of the various detecting zones and giving instructions for the operation, maintenance, and testing of the system. This chart, or a separate card or booklet to be kept near the chart, must have tabulated spaces for the date and signature of the licensed officer of the vessel who must witness or conduct the periodic tests.

(7) The audible alarms must be identified as required by § 78.47–13 of this subchapter.

(c) *Zoning.* (1) The fire detection system must be divided into separate zones to restrict the area covered by any particular alarm signal.

(2) All spaces in a fire detection zone must be accessible from one to another without leaving the deck involved. All doors in watertight subdivision bulkheads and main vertical zone bulkheads must be assumed closed for the purpose of this requirement.

(3) The fire detection zone must not include spaces on more than one deck, except:

(i) Adjacent and communicating spaces on different decks at the ends of the vessel having a combined ceiling area of not more than 3,000 sq ft;

(ii) Isolated rooms or lockers in such spaces as mast houses, wheelhouse top, etc., which are easily communicable with the area of the fire detection circuit to which they are connected; and

(iii) Systems with indicators for individual spaces.

(4) The fire detection zone must not contain more than 50 protected rooms or spaces.

(d) *Repair of existing systems.* (1) If the status of the approval for the system is other than ''Former—Do not use'', the system may be repaired by the following means:

(i) Repair in kind using the same components as installed and listed on the approved drawings;

(ii) Repair using equivalent components from the authorized component list for the type approval for that system;

(iii) Repair using equivalent components from the authorized component list for the type approval for another fire detection system, provided that the replacement devices are compatible with the installed system; and

(iv) Repair using devices that are currently type approved, provided that the replacement devices are compatible with the installed system.

(2) Any changes to the system that will result in the fire detection system not complying with the approved drawings require the drawings to be revised and submitted to the Marine Safety Center for review.

TABLE 76.27–80—INSTALLATIONS

Space	Detecting systems
Safety Areas	
Wheelhouse or fire-control room	None required.[1]
Stairway and elevator enclosures	None required.[1]
Communication corridors	None required.[1]
Lifeboat embarkation and lowering stations	None required.
Radio room	None required.[1]
Accommodations	
Staterooms, toilet spaces, isolated pantries, etc	None required.[1]
Offices, lockers, and isolated storerooms	Electric, pneumatic, or automatic sprinkling.[1]
Public spaces	None required with 20-minute patrol. Electric, pneumatic, or automatic sprinkling with 1 hour patrol.[1]
Open decks or enclosed promenades	None required.
Service Spaces	
Galleys	None required.[1]
Main pantries	None required.[1]

TABLE 76.27–80—INSTALLATIONS—Continued

Space	Detecting systems
Motion picture booths and film lockers	Electric, pneumatic, or automatic sprinkling.[1] [2]
Paint and lamp rooms	Smoke detecting.[3]
Inaccessible baggage, mail, and specie rooms and storerooms	Smoke detecting.[3]
Accessible baggage, mail, and specie rooms and storerooms	Electric, pneumatic, or automatic sprinkling.
Refrigerated storerooms	None required.
Carpenter, valet, photographic, and printing shops, sales rooms, etc	Electric, pneumatic, or automatic sprinkling.
Machinery Spaces	
Coal fired boilers: Bunker and boiler space	None required.
Oil fired boilers: Spaces containing oil fired boilers either main or auxiliary, their fuel oil service pumps, and/or such other fuel oil units as the heaters, strainers, valves, manifolds, etc., that are subject to the discharge pressure of the fuel oil service pumps, together with adjacent spaces to which oil can drain.	None required.
Internal combustion or gas turbine propelling machinery spaces	None required.
Electric propulsive motors or generators of open type	None required.
Enclosed ventilating systems for motors and generators of electric propelling machinery.	None required.
Auxiliary spaces, internal combustion or gas turbine	None required.
Auxiliary spaces, electric motors or generators	None required.
Auxiliary spaces, steam	None required.
Trunks to machinery spaces	None required.
Fuel tanks	None required.
Cargo Spaces	
Inaccessible during voyage (combustible cargo), including trunks (excluding tanks).	Smoke detecting.
Accessible during voyage (combustible cargo)	Smoke detecting, electric, pneumatic or automatic sprinkling.
Vehicular deck (except where no overhead deck is 30 feet (9.14 meters) in length or less).	None required.
Cargo oil tanks	None required.
Specially suitable for vehicles	Smoke detecting, electric, pneumatic or automatic sprinkling.

[1] Vessels of 100 GT or more contracted for on or before May 27, 1936, and having combustible joiner work must be fitted with an automatic sprinkler system, except in relatively incombustible spaces.

[2] Sprinkler heads may be attached to a sanitary system provided electrical or pneumatic detecting is installed.

[3] On vessels contracted for prior to January 1, 1962, a steam smothering system may be accepted. However, although existing steam smothering systems may be repaired, replaced, or extended, no new system contracted for on or after January 1, 1962, will be permitted.

§ 76.27–90 Installations contracted for prior to November 19, 1952.

(a) Installations contracted for prior to November 19, 1952, must meet the following requirements:

(1) Existing arrangements, materials, and equipment previously approved will be considered satisfactory so long as they meet the minimum requirements of this paragraph, and they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standards as the original installation.

(2) The details of the systems must be in general agreement with §§ 76.27–5 through 76.27–15 insofar as is reasonable and practicable.

(b) [Reserved]

Subpart 76.30—Pneumatic Fire Detection System, Details

■ 78. Revise the heading of subpart 76.30 to read as set forth above.

■ 79. Revise § 76.30–1 to read as follows:

§ 76.30–1 Application.

(a) Where a pneumatic fire detection system is installed, the provisions of this subpart, with the exception of § 76.30–90, must apply to all installations contracted for on or after November 19, 1952, and prior to July 22, 2021. Installations contracted for prior to November 19, 1952, must meet the requirements of § 76.30–90.

(b) [Reserved]

§ 76.30–5 [Amended]

■ 80. In § 76.30–5, remove the word "detecting" wherever it appears and add, in its place, the word "detection"; and remove the word "shall" wherever it appears and add, in its place, the word "must".

■ 81. Revise § 76.30–10 to read as follows:

§ 76.30–10 Location and spacing of tubing.

(a) The tubing must be located on the overhead or within 12 inches of the overhead on the bulkheads. Where liable to physical damage, the tubing must be suitably protected.

(b) In each enclosed space or separate room there must be exposed at least 5 percent of the total length of tubing in that circuit, but in no case may the amount be less than 25 feet.

(c) No spot on the overhead of a protected space may be more than 12 feet from the nearest point of tubing. Where beams or girders extend below the ceiling, or where the ceiling is installed at more than one level, the tubing must be located so as to be most effective.

§ 76.30–15 [Amended]

■ 82. Amend § 76.30–15 as follows:

■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. In paragraph (a), after the words "On vessels", remove the word "over" and add, in its place, the words "greater than";

■ c. In paragraph (c), after the words "at a temperature rise of approximately", remove the text "40 degrees F" and add, in its place, the text "40 °F"; and

■ d. In paragraph (d), remove the word "detecting" and add, in its place, the word "detection"

§ 76.30–90 [Amended]

■ 83. Amend § 76.30–90 as follows:
■ a. In paragraph (a) introductory text, remove the word "shall" and add, in its place, the word "must";
■ b. In paragraph (a)(1), remove the word "shall" and add, in its place, the word "will"; and
■ c. In paragraph (a)(2), remove the word "shall" and add, in its place, the word "must"; and after the words "in general agreement with", remove the text "§§ 76.30–5 through 76.30–15" and add, in its place, the text "§§ 76.27–5 through 76.27–35".

Subpart 76.33—Smoke Detection System, Details

■ 84. Revise the heading of subpart 76.33 to read as written above.
■ 85. Revise § 76.33–1 to read as follows:

§ 76.33–1 Application.

(a) Where a smoke detection system is installed, the provisions of this subpart, with the exception of § 76.33–90, apply to all installations contracted for on or after November 19, 1952, and prior to July 22, 2021. Installations contracted for prior to November 19, 1952, must meet the requirements of § 76.33–90 of this subpart.

(b) Vessels must comply with the requirements of § 76.33–20(c) of this subpart not later than July 22, 2021.

§ 76.33–5 [Amended]

■ 86. In § 76.33–5, remove the word "detecting" wherever it appears and add, in its place, the word "detection"; and remove the word "shall" wherever it appears and add, in its place, the word "must".

§ 76.33–10 [Amended]

■ 87. Amend § 76.33–10 as follows:
■ a. In paragraphs (a) and (c), remove the word "shall" wherever it appears and add, in its place, the word "must".
■ b. In paragraph (b), remove the word "shall" and add, in its place, the word "may".

§ 76.33–15 [Amended]

■ 88. Amend § 76.33–15 as follows:
■ a. Remove the word "detecting" wherever it appears and add, in its place, the word "detection";
■ b. Remove the word "shall" wherever it appears and add, in its place, the word "must"; and
■ c. In paragraph (e), remove the word "tapes" and add, in its place, the word "traps",
■ 89. Amend § 76.33–20 as follows:
■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";
■ b. In paragraph (a), after the words "On vessels", remove the word "over" and add, in its place, the words "greater than", and remove the word "detecting" wherever it appears and add, in its place, the word "detection";
■ c. In paragraphs (b) and (e), remove the word "detecting" wherever it appears and add, in its place, the word "detection'"
■ d. Revise paragraph (c); and
■ e. In paragraphs (d) and (h), remove the word "detecting" wherever it appears and add, in its place, the word "detection".

The revision reads as follows:

§ 76.33–20 Operation and installation.

* * * * *

(c) No exhaust from the detection cabinet may be discharged in the vicinity of the cabinet to permit the detection of fire by odor. Instead, the exhaust must be directed to the outside. Vessels must comply with this requirement not later than July 22, 2021.

* * * * *

§ 76.33–90 [Amended]

■ 90. Amend § 76.33–90 as follows:
■ a. In paragraph (a) introductory text, remove the word "shall" and add, in its place, the word "must";
■ b. In paragraph (a)(1), remove the word "shall" and add, in its place, the word "will"; and
■ c. In paragraph (a)(2), remove the word "shall" and add, in its place, the word "must"; and after the words "general agreement with", remove the text "§§ 76.33–5 through 76.33–15" and add, in its place, the text "§§ 76.27–5 through 76.27–35".

§ 76.35–1 [Amended]

■ 91. Amend § 76.35–1 as follows:
■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must"; and
■ b. In paragraph (a), after the text "on or after November 19, 1952", add the text", and prior to July 22, 2021".
■ 92. Amend § 76.35–5 to revise paragraph (a) to read as follows:

§ 76.35–5 Zoning.

(a) The zoning of the manual alarm system must meet the same requirements as those for the fire detection system set forth in § 76.27–15(d).

* * * * *

§ 76.35–10 [Amended]

■ 93. Amend § 76.35–10 as follows:
■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must"; and
■ b. In the section heading and paragraphs (a) and (c), remove the word "boxes" wherever it appears and add, in its place, the word "stations"; and remove the word "box" wherever it appears and add, in its place, the word "station".

§ 76.35–15 [Amended]

■ 94. Amend § 76.35–15 as follows:
■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";
■ b. In paragraphs (b) and (f), remove the word "boxes" wherever it appears and add, in its place, the word "stations"; and
■ c. In paragraphs (c) and (e), remove the word "detecting" and add, in its place, the word "detection".
■ 95. Revise § 76.50–1 to read as follows:

§ 76.50–1 Application.

■ (a) The provisions of this subpart, with the exception of §§ 76.50–80 and 76.50–90, as applicable, apply to all vessels contracted for on or after November 19, 1952.
■ (b) Vessels contracted for prior to January 18, 2017 and on or after November 19, 1952, must meet the requirements of § 76.50–80.
■ (c) Vessels contracted for prior to November 19, 1952, must meet the requirements of § 76.50–90.

§ 76.50–5 [Removed and Reserved]

■ 96. Remove and reserve § 76.50–5.
■ 97. Revise § 76.50–10 to read as follows:

§ 76.50–10 Location.

(a) Approved portable and semi-portable extinguishers must be installed in accordance with table 76.50–10(a) of this section.

(b) Table 76.50–10(a) indicates the minimum required number and type of extinguisher for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 76.50—10(a)—CARRIAGE OF PORTABLE AND SEMI-PORTABLE FIRE EXTINGUISHERS

Space	Fire extinguishing	
	Minimum required rating	Quantity and location
Safety Area [1]		
Wheelhouse or fire control room	20–B:C	1 of each classification on vessels over 1,000 GT. (Not required in both spaces.) (Multiple classifications may be recognized.)
Stairway and elevator enclosures		None required.
Communicating corridors	2–A	1 in each main corridor in each main vertical zone. (May be located in stairway enclosures.)
Lifeboat embarkation and lowering stations		None required.
Radio room	20–B:C [3]	2 in the vicinity of the exit.[2]
Accommodations [1]		
Staterooms, toilet spaces, isolated pantries, etc		None required.
Offices, lockers, and isolated storerooms		None required.
Public spaces	2–A	1 for each 2,500 sq ft or fraction thereof located in vicinity of the exits, except that none are required for spaces under 500 sq ft.
Open decks or enclosed promenades		None required.
Service Spaces		
Galleys	40–B:C	1 for each 2,500 sq ft or fraction thereof suitable for hazards involved.
Main pantries	2–A	1 for each 2,500 sq ft or fraction thereof located in the vicinity of the exits.
Motion picture booths and film lockers	10–B:C [3]	1 outside in the vicinity of the exit.
Paint and lamp rooms	40–B	1 outside space in the vicinity of the exit.
Inaccessible baggage, mail, and specie rooms, and storerooms.		None required.
Accessible baggage, mail, and specie rooms, and storerooms	2–A	1 for each 2,500 sq ft or fraction thereof located in the vicinity of the exits, either inside or outside the spaces.
Refrigerated storerooms	2–A	1 for each 2,500 sq ft or fraction thereof located in the vicinity of the exits, outside the spaces.
Carpenter, valet, photographic, printing shops sales rooms, etc.	2–A	1 outside the space in the vicinity of the exit.
Machinery Spaces		
Coal-fired boilers: Bunker and boiler space		None required.
Oil-fired boilers: Spaces, containing oil fired boilers, either main or auxiliary, or their fuel oil units.	40–B	2 required.[3]
	160–B	1 required.[4]
Internal combustion or gas turbine propelling machinery spaces.	40–B	1 for each 1,000 brake horsepower, but not less than 2 or more than 6.
	120–B	1 required.[5]
Electric propulsive motors or generators of open type	40–B:C	1 for each propulsion motor or generator unit.
Enclosed ventilating systems for motors and generators of electric propelling machinery.		None required.
Auxiliary spaces, internal combustion or gas turbine	40–B	1 outside the space in the vicinity of the exit.[6]
Auxiliary spaces, electric emergency motors or generators	40–B:C	1 outside the space in the vicinity of the exit.[6]
Auxiliary spaces, steam		None required.
Trunks to machinery spaces		None required.
Fuel tanks		None required.
Cargo Spaces		
Inaccessible during voyage, including trunks (excluding tanks)		None required.
Accessible during voyage	2–A	1 for each 1,200 sq ft or fraction thereof.
Vehicular spaces (covered by a sprinkler system)	40–B	1, plus 1 for each 6,000 sq ft or fraction thereof.
Vehicular spaces (not covered by a sprinkler system)	40–B	1, plus 1 for each 1,500 sq ft or fraction thereof.[7]
Cargo oil tanks		None required.
Spare Units		
	2–A	10 percent of the required number for public spaces rounded up.
	40–B	10 percent of the required number for cargo spaces rounded up.

TABLE 76.50—10(a)—CARRIAGE OF PORTABLE AND SEMI-PORTABLE FIRE EXTINGUISHERS—Continued

Space	Fire extinguishing	
	Minimum required rating	Quantity and location
	40–B:C	1.

[1] In any case, on vessels of 150 feet (45.72 meters) in length and over, there must be at least two 2–A units on each passenger deck.

[2] For vessels on an international voyage, substitute 1 20–B:C in the vicinity of the exit.

[3] Vessels of less than 1,000 GT and not on an international voyage require 1.

[4] Vessels of less than 1,000 GT and not on an international voyage may substitute 1 160–B.

[5] If an oil-burning donkey boiler is fitted in the space, the 160–B previously required for the protection of the boiler room may be substituted. Not required on vessels of less than 300 GT if the fuel has a flashpoint of 110 °F or lower except those on an international voyage.

[6] Not required on vessels of less than 300 GT if the fuel has a flashpoint higher than 110 °F.

[7] Two 5–B units may be substituted for 1 20–B unit.

The location of the equipment must be to the satisfaction of the Officer in Charge, Marine Inspection. Nothing in this paragraph should be construed as limiting the Officer in Charge, Marine Inspection, from requiring such additional equipment as he or she deems necessary for the proper protection of the vessel.

(c) Semi-portable fire extinguishing systems must be located in the open so as to be readily seen.

(d) If portable fire extinguishers are not located in the open or behind glass so that they may be readily seen, they may be placed in enclosures together with the firehose, provided such enclosures are marked as required by § 78.47–20 of this subchapter.

(e) Portable fire extinguishers and their stations must be numbered in accordance with § 78.47–30 of this subchapter.

(f) Portable or semi-portable extinguishers, which are required on their nameplates to be protected from freezing, must not be located where freezing temperatures may be expected.

§ 76.50–15 [Removed]

■ 98. Remove § 76.50–15.

■ 99. Revise § 76.50–20 as follows:

■ a. In the section heading, remove the word "Semiportable" and add, in its place, the word "Semi-portable";

■ b. In paragraphs (a) and (b), remove the text "size III, IV, and V" and add, in its place, the text "semi-portable"; and

■ c. Add paragraph (c) to read as follows:

§ 76.50–20 Semi-portable fire extinguishers.

* * * * *

(c) Each semi-portable extinguisher must be fitted with a suitable hose and nozzle, or other practicable means, so that all areas of the space can be protected.

■ 100. Add § 76.50–80 to read as follows:

§ 76.50–80 Locations and number of fire extinguishers required for vessels constructed prior to January 18, 2017.

(a) Vessels contracted for prior to January 18, 2017, must meet the following requirements:

(1) Previously installed extinguishers with extinguishing capacities smaller than are required in Table 76.50–10(a) of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection; and

(2) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

(b) [Reserved]

PART 78—OPERATIONS

■ 101. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 102. Revise § 78.47–13 to read as follows:

§ 78.47–13 Fire and automatic sprinkler alarm indicators.

(a) The fire detection, alarm, and automatic sprinkler indicators in the engine room must be identified by at least 1-inch red lettering as "FIRE ALARM" or "SPRINKLER ALARM" as appropriate. Where such alarm indicators on the bridge or in the fire control station do not form a cabinet, the indicators must be suitably identified as above.

(b) [Reserved]

PART 90—GENERAL PROVISIONS

■ 103. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Sections 90.05–20 and 90.10–40 also issued under sec. 617, Pub. L. 111–281, 124 Stat. 2905.

■ 104. Amend § 90.01–1 by adding, at the end of the section, a sentence to read as follows:

§ 90.01–1 Purpose of regulations.

* * * The regulations in this subchapter (parts 90, 91, 92, 93, 95, 96, 97, 98, and 105) have preemptive effect over State or local regulation within the same fields.

PART 91—INSPECTION AND CERTIFICATION

■ 105. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307; 46 U.S.C. Chapter 701; Executive Order 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 106. Add § 91.25–7 to read as follows:

§ 91.25–7 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition,

effective December 5, 2009, IBR approved for § 91.25–20(a).

(2) [Reserved]

§ 91.25–20 [Amended]

■ 107. Amend § 91.25–20 as follows:

■ a. Revise paragraph (a)(1); and

■ b. In paragraphs (a)(2) through (4), remove the word "shall" wherever it appears and add, in its place, the word "must".

The revision reads as follows:

§ 91.25–20 Fire extinguishing equipment.

(a) * * *

(1) Portable and semi-portable extinguishers must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 91.25–7) as amended here:

(i) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(ii) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iii) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iv) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

* * * * *

PART 92—CONSTRUCTION AND ARRANGEMENT

■ 108. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 109. Revise § 92.01–2(b)(1) to read as follows:

§ 92.01–2 Incorporation by reference.

* * * * *

(b) * * *

(1) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for § 92.07–1(c).

* * * * *

§ 92.07–1 [Amended]

■ 110. Amend § 92.07–1 as follows:

■ a. In paragraph (a)—

■ i. After the text "of § 92.07–90,", remove the word "shall";

■ ii, After the text "4,000 gross tons", remove the words "and over" and add, in their place, the words "or more"; and

■ iii. After the text "to January 1, 1962," remove the word "shall" and add, in its place, the word "must";

■ b. In paragraph (b)—

■ i. After the text "of § 92.07–90," remove the word "shall";

■ ii. After the text "300 gross tons", remove the words "and over" and add, in their place, the words "or more"; and

■ iii. After the text "to July 1, 1968," remove the word "shall" and add, in its place, the word "must"; and

■ c. Revise paragraph (c) to read as follows:

§ 92.07–1 Application.

* * * * *

(c) Vessels meeting the structural fire protection requirements of SOLAS, Chapter II–2, Regulations 5, 6, 8, 9, and 11 (incorporated by reference, see § 92.01–2), may be considered equivalent to the provisions of this subpart.

PART 95—FIRE PROTECTION EQUIPMENT

■ 111. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 112. Amend § 95.01–1 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a), remove the word "shall"; and

■ c. Revise paragraph (b).

The revisions read as follows:

§ 95.01–1 General.

* * * * *

(b) Equipment installed prior to August 22, 2016 as required by this paragraph (b) may remain in service so long as it is maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

■ 113. In § 95.01–2—

■ a. Redesignate paragraph (c) as (d);

■ b. Add new paragraphs (c) and (e); and

■ c. Revise redesignated paragraph (d).

The revision and additions read as follows:

§ 95.01–2 Incorporation by reference.

* * * * *

(c) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) FSS Code, International Code for Fire Safety Systems, Second Edition, 2007 Edition (Resolution MSC.98(73)), IBR approved for § 95.05–3(a) and (b).

(2) [Reserved]

(d) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 95.30–1.

(2) [Reserved]

(e) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001, IBR approved for § 95.10–10(n).

(2) [Reserved]

■ 114. Amend § 95.01–5 as follows:

■ a. In paragraph (a), after the words "Where fire", remove the words "detecting or", and remove the word "shall" and add, in its place, the word "must"; and

■ b. Add paragraph (b) to read as follows:

§ 95.01–5 Equipment installed but not required.

* * * * *

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed and labeled by an independent, nationally recognized testing laboratory as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

Subpart 95.05—Fire Detection and Extinguishing Equipment

■ 115. Revise the heading of subpart 95.05 to read as shown above.

■ 116. Revise § 95.05–1 to read as follows:

§ 95.05–1 Fire detection, manual alarm, and supervised patrol systems.

(a) Fire detection, manual alarm, and supervised patrol systems are not required except in special cases; but if installed, the systems must meet the applicable requirements of 46 CFR, part 76 of subchapter H (Passenger Vessels) of this chapter.

(b) In each compartment containing explosives, and in adjacent cargo compartments, there must be provided a smoke detection system. When used, sample extraction smoke detection systems must meet the requirements in § 95.05–3.

(c) Enclosed spaces that are "specially suitable for vehicles" must be fitted with a fire detection and alarm system.

■ 117. Add § 95.05–3 to read as follows:

§ 95.05–3 Sample extraction smoke detection systems.

(a) For vessels contracted for on or after January 18, 2017, a sample extraction smoke detection system must be installed in accordance with chapter 10 of the FSS Code (incorporated by reference, see § 95.01–2).

(b) Periodically, the FSS Code defers to "the Administration." For U.S. flag vessels, "the Administration" is the United States Coast Guard. The following requirements are provided for the provisions of Chapter 10 that defer to the Administration:

(1) For sequential scanning systems under FSS Code, chapter 10, paragraph 2.1.2, a satisfactory overall response time will be achieved by limiting the maximum allowable interval to 2 minutes.

(2) Under the FSS Code, chapter 10, paragraph 2.2.2, fans of sufficient capacity to provide a satisfactory overall response time will signal an alarm within 3 minutes upon introduction of smoke at the most remote accumulator on a vehicle deck and within 5 minutes upon introduction of smoke at the most remote accumulator in container and general cargo holds.

(3) Means provided to isolate smoke accumulators from liquid or refrigerated cargoes must be to the satisfaction of the Commanding Officer of the U.S. Coast Guard Marine Safety Center.

(4) Notwithstanding anything to the contrary in FSS Code chapter 10, periodic testing of sample extraction smoke detection systems must be conducted as part of the annual inspection and include inspection of all piping, valves, controls and alarms, and by introduction of smoke into the accumulators.

§ 95.10–5 [Amended]

■ 118. Amend § 95.10–5 as follows:

■ a. In paragraphs (a), (c), (d), (e), and (g), remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. Revise Table 95.10–5(a);

■ c. In paragraph (b)—

■ i. After the words "On vessels of 1,000 gross tons", remove the words "and over" and add, in their place, the words "or more";

■ ii. After the words "paragraph (c) of this section,", remove the word "shall" and add, in its place, the word "must"; and

■ iii. After the words "However, in no case", remove the word "shall" and add, in its place, the word "may";

■ iv. In paragraph (h), after the words "propulsion machinery, where", remove the number "2" and add, in its place, the word "two", and after the words "the installation of a total flooding", remove the words "carbon dioxide" and add, in their place, the words "fixed fire extinguishing".

The revision reads as follows:

§ 95.10–5 Fire pumps.

* * * * *

TABLE 95.10–5(a)—FIRE PUMP SYSTEM REQUIREMENTS

Gross tons		Minimum number of pumps	Hose and hydrant size, inches	Nozzle orifice size, inches	Length of hose, feet
Over	Not over				
	100	[1] 1	[1] 1½	[1] ½	[1] 50
100	1,000	1	1½	⅝	50
1,000	1,500	2	1½	⅝	50
1,500		2	[2] 2½	[2] ⅞	[2] 50

[1] On vessels of 65 feet (19.8 meters) in length or less, ¾-inch hose of a good commercial grade together with a commercial garden hose nozzle may be used. The pump may be hand operated and the length of hose must be sufficient to assure coverage of all parts of the vessel.

[2] A 1½ inch hose that is 75 feet (22.86 meters) in length with a ⅝-inch nozzle may be used where specified by § 95.10–10(b) of this subpart for interior locations and 50 feet (15.24 meters) of 1½ inch hose may be used in exterior locations on vessels in other than ocean or coastwise service. For vessels on ocean or coastwise service, two 1½ inch outlets, each provided with one 1½ inch hose supplied through a wye connection may be substituted.

* * * * *

■ 119. Amend § 95.10–10 as follows:

■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. Remove the words "Fire hose" or "fire hose" wherever they appear and add, in their place, the word "Firehose" or "firehose";

■ c. Revise paragraph (b);

■ d. In paragraph (c), remove the words "and over" wherever they appear and add, in their place, the words "or more"; and

■ e. In paragraph (g), after the words "at least one length of firehose, a spanner", add the word "wrench".

■ The revision reads as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(b) Instead of the 2½-in hose and hydrants specified in Table 95.10–5(a) of this subpart, on vessels of more than 1,500 gross tons:

(1) The hydrants in interior locations may have wye connections for 1½-in hoses. In these cases, the hose must be 75 ft in length, and only one hose is required at each fire station; however, if all such stations can be satisfactorily served with 50-ft lengths, a 50-ft hose may be used; and

(2) The hydrants for exterior locations may substitute two 1½ in outlets, each with a 1½-in hose, supplied through a wye connection.

* * * * *

■ 120. Revise § 95.30–1 to read as follows:

§ 95.30–1 Application.

Automatic sprinkler systems must comply with Chapter 25 of NFPA 13 (incorporated by reference, see § 95.01–2).

■ 121. Revise § 95.50–1 to read as follows:

§ 95.50–1 Application.

(a) The provisions of this subpart, with the exception of §§ 95.50–80 and 95.50–90, as applicable, apply to all vessels, other than unmanned barges and fishing vessels, contracted for on or after November 19, 1952.

(b) Vessels contracted for prior to August 22, 2016 and on or after November 19, 1952, must meet the requirements of § 95.50–80.

(c) Vessels contracted for prior to November 19, 1952, must meet the requirements of § 95.50–90.

§ 95.50–5 [Removed and Reserved]

■ 122. Remove and reserve § 95.50–5.

■ 123. Revise § 95.50–10 to read as follows:

§ 95.50–10 Location.

(a) Approved portable fire extinguishers and semi-portable fire extinguishing systems must be installed in accordance with Table 95.50–10(a) of this section. The location of the equipment must be to the satisfaction of the Officer in Charge, Marine Inspection. Nothing in this paragraph should be construed as limiting the Officer in Charge, Marine Inspection, from requiring such additional equipment as he or she deems necessary for the proper protection of the vessel.

(b) Table 95.50–10(a) indicates the minimum required number and type of extinguisher for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 95.50–10(a)—PORTABLE FIRE EXTINGUISHER AND SEMI-PORTABLE FIRE EXTINGUISHING SYSTEMS

Space	Minimum required rating	Quantity and location
	Safety Areas[1]	
Wheelhouse or fire control room		None required.
Stairway and elevator enclosures		None required.
Communicating corridors.	2–A	1 in each main corridor not more than 150 ft apart. (May be located in stairways.)
Lifeboat embarkation and lowering stations		None.
Radio room	20–B:C[2]	2 required in the vicinity of the exit.[2]
	Accommodations[1]	
Staterooms, toilet spaces, public spaces, offices, lockers, isolated storerooms, pantries, open decks, etc.		None required.
	Service Spaces[1]	
Galleys	40–B:C	1 for each 2,500 sq ft or fraction thereof suitable for hazards involved.
Paint and lamp rooms	40–B	1 outside space in the vicinity of the exit.
Accessible baggage, mail, specie rooms, and storerooms	2–A	1 for each 2,500 sq ft or fraction thereof located in the vicinity of the exits, either inside or outside the spaces.
Carpenter shop and similar spaces	2–A	1 outside the space in the vicinity of the exit.
	Machinery Spaces	
Coal-fired boilers: Bunker and boiler space		None required.
Oil-fired boilers: Spaces containing oil-fired boilers, either main or auxiliary, or their fuel-oil units.	40–B 160–B	2 required.[3] 1 required.[4]
Internal combustion or gas turbine propelling machinery spaces.	40–B 120–B	1 for each 1,000 brake horsepower; not less than 2 but not more than 6.[5] 1 required.[6,7]
Electric propulsive motors or generators of an open type	40–B:C	1 for each propulsion motor or generator unit.
Enclosed ventilating systems for motors and generators of electric propelling machinery.		None required.
	Auxiliary Spaces	
Internal combustion or gas turbine	40–B	1 outside the space in the vicinity of the exit.[7]
Electric emergency motors or generators	40–B:C	1 outside the space in the vicinity of the exit.[8]
Steam		None required.
Trunks to machinery spaces		None required.
Fuel tanks		None required.
	Cargo Spaces	
Inaccessible during voyage, including trunks and cargo tanks		None required.
Accessible during voyage		None required.
	Spare Units	
	2–A	10 percent of the total number required rounded up.
	40–B:C	10 percent of the total number required rounded up.

TABLE 95.50–10(a)—PORTABLE FIRE EXTINGUISHER AND SEMI-PORTABLE FIRE EXTINGUISHING SYSTEMS—Continued

Space	Minimum required rating	Quantity and location
	20–B:C	1

[1] For motorboats, the total number of portable fire extinguishers required for safety areas, accommodation spaces, and service spaces must be one 20–B for motorboats of less than 50 GT and two 20–B ratings for motorboats of 50 GT or more.

[2] For vessels on an international voyage, substitute one 20–C in the vicinity of the exit.

[3] Vessels of less than 1,000 gross tons require one.

[4] Vessels of less than 1,000 gross tons may substitute one 160–B.

[5] Only one is required for motorboats.

[6] If an oil-burning donkey boiler fitted in space, the 160–B previously required for the protection of the boiler may be substituted. Not required where a fixed carbon dioxide system is installed.

[7] Not required on vessels of less than 300 gross tons if the fuel has a flashpoint higher than 110 °F.

[8] Not required on vessels of less than 300 gross tons.

(c) Semi-portable fire extinguishing systems must be located in the open so as to be readily seen.

(d) If portable fire extinguishers are not located in the open or behind glass so that they may be readily seen, they may be placed in enclosures together with the firehose, provided such enclosures are marked as required by § 97.37–15 of this subchapter.

(e) Portable fire extinguishers and their stations must be numbered in accordance with § 97.37–23 of this subchapter.

(f) Portable or semi-portable extinguishers, which are required on their nameplates to be protected from freezing, must not be located where freezing temperatures may be expected.

§ 95.50–15 [Removed]

■ 124. Remove § 95.50–15.

■ 125. Amend § 95.50–20 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a), remove the text "size III, IV, and V" and add, in its place, the text "semi-portable";

■ c. In paragraph (b), remove the text "size III, IV, or V" and add, in its place, the text "semi-portable"; and

■ d. Add paragraph (c).

The revision and addition read as follows:

§ 95.50–20 Semi-portable fire extinguishers.

* * * * *

(c) Semi-portable extinguishers must be fitted with suitable hoses and nozzles, or other practicable means, so that all areas of the space can be protected.

■ 126. Add § 95.50–80 to read as follows:

§ 95.50–80 Location and number of fire extinguishers required for vessels constructed prior to August 22, 2016.

(a) Vessels contracted for prior to August 22, 2016 must meet the following requirements:

(1) Previously installed extinguishers with extinguishing capacities smaller than what is required in table 95.50–10(a) of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

(b) [Reserved]

PART 107—INSPECTION AND CERTIFICATION

■ 127. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3307; 46 U.S.C. 3316; Department of Homeland Security Delegation No. 0170.1; § 107.05 also issued under the authority of 44 U.S.C. 3507.

■ 128. Revise § 107.01 to read as follows:

§ 107.01 Purpose of subchapter.

This subchapter prescribes rules for the design, construction, equipment, inspection and operation of mobile offshore drilling units operating under the U.S. flag. The regulations in this subchapter (parts 107 through 109) have preemptive effect over State or local regulation within the same fields.

■ 129. In § 107.235—

■ a. Revise the section heading and paragraph (a); and

■ b. Remove Table 107.235.

The revision read as follows:

§ 107.235 Servicing of portable fire extinguishers, semi-portable fire extinguishers and fixed fire extinguishing systems.

(a) Except as provided in the following paragraphs, portable and semi-portable extinguishers must be inspected and maintained in accordance with NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.* You may inspect a copy at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(2) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(3) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(4) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records has not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the

necessary maintenance procedures were conducted.

* * * * *

PART 108—DESIGN AND EQUIPMENT

■ 130. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; Department of Homeland Security Delegation No. 0170.1.

■ 131. Revise § 108.101 to read as follows:

§ 108.101 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, 877–909–2786, *http://www.astm.org.*

(1) ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester, IBR approved for § 108.500(b).

(2) ASTM F 1014–92, Standard Specification for Flashlights on Vessels, IBR approved for § 108.497(b).

(3) ASTM F1121–87 (Reapproved 2010), Standard Specification for International Shore Connections for Marine Fire Applications, (approved March 1, 2010), IBR approved for § 108.427(a).

(c) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements, 17 November 1983, IBR approved for § 108.105(c).

(2) Resolution A.649(16), Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU Code),19 October 1989 with amendments of June 1991, IBR approved for § 108.503.

(3) Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, 20 November 1989, IBR approved for §§ 108.645(a) and 108.649(a) and (e).

(4) Resolution A.760(18), Symbols Related to Life-saving Appliances and Arrangements, 17 November 1993, IBR approved for §§ 108.646(a), 108.647, 108.649(b), (d), (f), and (g), and 108.655(e).

(d) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 108.430.

(2) [Reserved]

§ 108.405 [Amended]

■ 132. In§ 108.405(a)(1), after the words "Be approved by the Commandant" add the words "in accordance with 46 CFR 161.002".

■ 133. Revise § 108.430 to read as follows:

§ 108.430 General.

Automatic sprinkler systems must comply with Chapter 25 of NFPA 13 (incorporated by reference, see § 108.101).

■ 134. Revise § 108.491 to read as follows:

§ 108.491 General.

(a) Each portable and semi-portable fire extinguisher on a unit must be approved under subpart 162.028 or 162.039 of this chapter.

(b) Vessels contracted for prior to August 22, 2016 must meet the following requirements:

(1) Previously installed extinguishers with extinguishing capacities smaller than what is required in Table 108.495 of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

■ 135. Revise § 108.495 to read as follows:

§ 108.495 Locations and number of fire extinguishers required.

Table 108.495 of this section indicates the minimum required number and type of fire extinguishers for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 108.495—CARRIAGE OF PORTABLE FIRE EXTINGUISHERS

Space	Minimum required rating	Quantity and location
	Safety Areas	
Wheelhouse and control room	20–B:C	2 in the vicinity of the exit.
Stairway and elevator enclosure		None required.
Corridors	2–A	1 in each corridor not more than 150 ft (45 m) apart. (May be located in stairways.)
Lifeboat embarkation and lowering stations		None required.
Radio room	10–B:C	2 in the vicinity of the exit.
	Accommodations	
Staterooms, toilet spaces, public spaces, offices, lockers, small storerooms, pantries, open decks, and similar spaces.		None required.
	Service Spaces	
Galleys	40–B:C	1 for each 2,500 sq ft (232.2 sq m) or fraction thereof suitable for the hazards involved.
Paint and lamp rooms	40:B	1 outside each room in the vicinity of the exit.

TABLE 108.495—CARRIAGE OF PORTABLE FIRE EXTINGUISHERS—Continued

Space	Minimum required rating	Quantity and location
Storerooms	2–A	1 for each 2,500 sq ft (232.2 sq m) or fraction thereof located in the vicinity of the exits, either inside or outside the spaces.
Workshop and similar spaces	20B:C	1 outside each space in the vicinity of the exit.
Machinery Spaces		
Oil-fired boilers: Spaces containing oil-fired boilers, either main or auxiliary, or their fuel oil units.	40–B	2 required in each space.
	160–B	1 required in each space. See note 1.
Internal combustion or gas turbine propelling machinery spaces.	40–B	1 for each 1,000 brake horsepower but not less than 2 and not more than 6 in each space.
	120–B	1 required in each space. See note 1.
Motors or generators of electric propelling machinery that do not have an enclosed ventilating system.	40–B:C	1 for each motor or generator.
Motors and generators of electric propelling machinery that have enclosed ventilating systems.		None required.
Auxiliary Spaces		
Internal combustion engines or gas turbine	40–B	Outside the space containing engines or turbines in the vicinity of the exit.
Electric emergency motors or generators	40–B:C	1 outside the space containing motors or generators in the vicinity of the exit.
Steam driven auxiliary machinery		None required.
Trunks to machinery spaces		None required.
Fuel tanks		None required.
Miscellaneous Areas		
Helicopter landing decks	160–B	1 at each access route.
Helicopter fueling facilities	160–B	1 at each fuel transfer facility. See note 2.
Drill floor	40–B:C	2 required.
Cranes with internal combustion engines	40–B:C	1 required.
Spare Units		
	2–A	10 percent of the total required rounded up.
	40–B:C	10 percent of the total required rounded up.

[1] Not required where a fixed gas extinguishing system is installed.

[2] Not required where a fixed foam system is installed in accordance with § 108.489 of this subpart.

■ 136. In § 108.496—

■ a. Revise the section heading;

■ b. In paragraph (a), remove the text "size III, IV, and V" and add, in its place, the text "semi-portable"; and after the words "except a wheeled", remove the words "size V" and add, in their place, the word "semi-portable";

■ c. In paragraph (b) introductory text, remove the word "semiportable" and add, in its place, the word "semi-portable";

■ d. In paragraph (b)(1), remove the text "size V";

■ e. In paragraph (b)(2), remove the text "size III, IV, and V"; and

■ f. Add paragraph (c).

The revision and addition read as follows:

§ 108.496 Semi-portable fire extinguishers.

* * * * *

(c) Semi-portable extinguishers must be fitted with suitable hoses and nozzles, or other practicable means, so that all areas of the space can be protected.

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

■ 137. The authority citation for part 113 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

■ 138. Revise § 113.05–7 to read as follows:

§ 113.05–7 Environmental tests.

(a) Communication, alarm system, control, and monitoring equipment, with the exception of fire and smoke detection and alarm systems, must meet the environmental tests of—

(1) Section 4–9–7, Table 9, of ABS Steel Vessel Rules (incorporated by reference, see § 110.10–1 of this chapter) or the applicable ENV category of Lloyd's Register Type Approval System—Test Specification Number 1 (incorporated by reference, see § 110.10–1); and

(2) IEC 60533 (incorporated by reference, see § 110.10–1 of this chapter) as appropriate.

(b) Components of smoke detection and alarm systems must be tested in accordance with 46 CFR 161.002.

PART 114—GENERAL PROVISIONS

■ 139. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

■ 140. Revise § 114.100 to read as follows:

§ 114.100 Purpose.

The purpose of this subchapter is to implement applicable sections of

Subtitle II of Title 46, United States Code, which require the inspection and certification of small passenger vessels. The regulations in this subchapter (parts 114 through 122) have preemptive effect over State or local regulations within the same fields.

■ 141. Amend § 114.400(b) to revise the definition of the term "Open to the atmosphere" to read as follows:

§ 114.400 Definitions of terms used in this subchapter.

* * * * *

(b) * * *

Open to the atmosphere means a compartment that has at least 0.342 square meters of open area directly exposed to the atmosphere for each cubic meter (15 square inches for each cubic foot) of net compartment volume.

* * * * *

■ 142. Revise § 114.600 to read as follows:

§ 114.600 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Operating and Environmental Standards (CG–OES), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Boat and Yacht Council (ABYC), 613 Third Street, Suite 10, Annapolis, MD 21403, 410–990–4460, *http://www.abycinc.org.*

(1) A–1–93—Marine Liquefied Petroleum Gas (LPG) Systems, IBR approved for § 121.240(a), (c), (d), and (g).

(2) A–3–93—Galley Stoves, IBR approved for § 121.200.

(3) A–7–70—Boat Heating Systems, IBR approved for § 121.200.

(4) A–22–93—Marine Compressed Natural Gas (CNG) Systems, IBR approved for § 121.240(b) through (e).

(5) H–25–94—Portable Gasoline Fuel Systems for Flammable Liquids, IBR approved for § 119.458(b).

(6) P–1–93—Installation of Exhaust Systems for Propulsion and Auxiliary Engines, IBR approved for §§ 116.405, 119.425(c) and 119.430(k).

(c) American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, 281–877–5800, *http://ww2.eagle.org.*

(1) Rules for Building and Classing Aluminum Vessels, 1975, IBR approved for § 116.300(b).

(2) Rules for Building and Classing Steel Vessels, 1995, IBR approved for §§ 119.410 and 120.360(a).

(3) Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, 1983, IBR approved for § 116.300(a) and (b).

(4) Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995, IBR approved for § 116.300(c).

(5) Guide for High Speed Craft, 1997, IBR approved for § 116.300(b).

(d) American National Standards Institute (ANSI), 25 West 43rd Street, New York, NY 10036, 212–642–4900, *http://www.ansi.org.*

(1) A 17.1–1984, including supplements A 17.1a and b–1985, Safety Code for Elevators and Escalators, IBR approved for § 120.540.

(2) B 31.1–1986, Code for Pressure Piping, Power Piping, IBR approved for § 119.715.

(3) Z 26.1–1977, including 1980 supplement, Safety Glazing Materials For Glazing Motor Vehicles Operating on Land Highways, IBR approved for § 116.1030(b).

(e) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, 877–909–2786, *http://www.astm.org.*

(1) ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels, IBR approved for § 119.440(a).

(2) ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus, IBR approved for § 114.400(b).

(3) ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip, and Rolled Bar, IBR approved for § 119.440(a).

(4) ASTM B 127–98, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip, IBR approved for § 119.440(a).

(5) ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar, IBR approved for § 119.440(a).

(6) ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate, IBR approved for § 119.440(a).

(7) ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester, IBR approved for § 114.400(b).

(8) ASTM D 635–97, Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Plastics in a Horizontal Position, IBR approved for § 119.440(a).

(9) ASTM D 2863–95, Standard Test Method for Measuring the Minimum Oxygen Concentration to Support Candle-like Combustion of Plastics (Oxygen Index), IBR approved for § 119.440(a).

(10) ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials, IBR approved for §§ 116.405(f), 116.422(b), and 116.423(a).

(11) ASTM E 648–97, Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source, IBR approved for §§ 114.400(b) and 116.423(a).

(12) ASTM E 662–97, Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials, IBR approved for §§ 114.400(b) and 116.423(a).

(f) Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854, 800–678–4333, *http://www.ieee.org.*

(1) Standard 45–1977—Recommended Practice for Electrical Installations on Shipboard, IBR approved for § 120.340(o).

(2) [Reserved]

(g) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for § 116.400(c).

(2) Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances and Arrangements, dated 17 November 1983, IBR approved for § 114.540(c).

(3) Resolution A.658(16), Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances, dated 20 November 1989, IBR approved for § 122.604(h) and (i).

(4) Resolution A.688(17), Fire Test Procedures For Ignitability of Bedding Components, dated 06 November 1991, IBR approved for § 116.405(j).

(5) Resolution A.760(18), Symbols Related to Life-Saving Appliances and

Arrangements, dated 17 November 1993, IBR approved for § 122.604(f).

(h) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 115.810(b).

(2) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for §§ 116.439(d) and (e), and 116.440(c).

(3) NFPA 17–1994, Dry Chemical Extinguishing Systems, 1994 Edition, IBR approved for § 118.425(b).

(4) NFPA 17A–1994, Wet Chemical Extinguishing Systems, 1994 Edition, IBR approved for § 118.425(b).

(5) NFPA 70–1996, National Electrical Code (NEC), 1996 Edition,

(i) Section 250–95, IBR approved for § 120.372(c),

(ii) Section 310–13, IBR approved for § 120.340(d),

(iii) Section 310–15, IBR approved for § 120.340(o),

(iv) Article 430, IBR approved for § 120.320(e),

(v) Article 445, IBR approved for § 120.320(d).

(6) NFPA 92B–1995, Smoke Management Systems in Malls, Atria, and Large Areas, 1995 Edition, IBR approved for § 116.440(d).

(7) NFPA 261–1994, Test For Determining Resistance of Mock-up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes, 1994 Edition, IBR approved for §§ 114.400(b) and 116.423.

(8) NFPA 302–1994, Pleasure and Commercial Motor Craft, Chapter 6, 1994 Edition, IBR approved for §§ 121.200 and 121.240(a) through (c), (e) and (g).

(9) NFPA 306–1993, Control of Gas Hazards on Vessels, 1993 Edition, IBR approved for § 115.710(a).

(10) NFPA 701–1996, Fire Tests for Flame-Resistant Textiles and Films, 1996 Edition, IBR approved for § 116.423(a).

(11) NFPA 1963–1993, Fire Hose Connections, 1993 Edition, IBR approved for § 118.320(b).

(i) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 1399, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001, IBR approved for 118.320(b).

(2) UL 174–1989, Household Electric Storage Tank Water Heaters, as amended through June 23, 1994, IBR approved for § 119.320(a).

(3) UL 486A–1992, Wire Connectors and Soldering Lugs For Use With Copper Conductors, IBR approved for § 120.340(i).

(4) UL 489–1995, Molded-Case Circuit Breakers and Circuit Breaker Enclosures, IBR approved for § 120.380(m).

(5) UL 595–1991, Marine Type Electric Lighting Fixtures, IBR approved for § 120.410(d).

(6) UL 710–1990, Exhaust Hoods For Commercial Cooking Equipment, as amended through September 16, 1993, IBR approved for § 118.425(a).

(7) UL 723–1993, Surface Burning Characteristics of Building Materials, as amended through April 20, 1994, IBR approved for §§ 114.400(b), 116.422(b), 116.423, and 116.425.

(8) UL 1056–1989, Fire Test of Upholstered Furniture, IBR approved for § 116.423(a) and (b).

(9) UL 1058–1989, Halogenated Agent Extinguishing System Units, as amended through April 19, 1994, IBR approved for § 118.410(g).

(10) UL 1102–1992, Non integral Marine Fuel Tanks, IBR approved for § 119.440(a).

(11) UL 1104–1981, Marine Navigation Lights, as amended through May 4, 1988, IBR approved for § 120.420.

(12) UL 1110–1988, Marine Combustible Gas Indicators, as amended through May 16, 1994, IBR approved for § 119.480.

(13) UL 1453–1988, Electric Booster and Commercial Storage Tank Water Heaters, as amended through June 7, 1994, IBR approved for § 119.320(a).

(14) UL 1570–1995, Fluorescent Lighting Fixtures, IBR approved for § 120.410(d).

(15) UL 1571–1995, Incandescent Lighting Fixtures, IBR approved for § 120.410(d).

(16) UL 1572–1995, High Intensity Discharge Lighting Fixtures, IBR approved for § 120.410(d).

(17) UL 1573–1995, Stage and Studio Lighting Units, IBR approved for § 120.410(d).

(18) UL 1574–1995, Track Lighting Systems, IBR approved for § 120.410(d).

PART 115—INSPECTION AND CERTIFICATION

■ 143. The authority citation for part 115 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 144. Amend § 115.810(b)(1) by removing "Portable Fire Extinguishers" from the first sentence and by adding "(incorporated by reference, see § 114.600 of this chapter)" to the first sentence, after the first instance of "NFPA 10".

PART 116—CONSTRUCTION AND ARRANGEMENT

■ 145. The authority citation for part 116 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, Department of Homeland Security Delegation No. 0170.1.

■ 146. Amend § 116.400 to add paragraph (c) to read as follows:

§ 116.400 Application.

* * * * *

(c) Vessels meeting the structural fire protection requirements of SOLAS, Chapter II–2, Regulations 5, 6, 8, 9, and 11 (incorporated by reference, see § 114.600), may be considered equivalent to the provisions of this subpart.

■ 147. Amend § 116.440 as follows:

■ a. In paragraph (a), remove the text "(1000 square feet) or 20%" and add, in its place, the text "(1,000 square feet) or 20 percent";

■ b. In paragraph (a)(3), remove the word "shall" and add, in its place, the word "must";

■ c. In paragraph (b), remove the text "§ 76.33" and add, in its place, the text "§ 76.27"; and

■ d. In paragraph (c), after the words "an automatic sprinkler system meeting NFPA 13", add the words "(incorporated by reference, see § 114.600)".

PART 118—FIRE PROTECTION EQUIPMENT

■ 148. The authority citation for part 118 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 149. In § 118.115—

■ a. Revise the section heading;

■ b. In paragraph (a), after the words "Except as otherwise required by paragraphs", remove the words "(b) and (c) of this section" and add, in their place, the words "(b), (c), and (d) of this section"; and

■ c. Revise paragraph (d).

The revisions read as follows:

§ 118.115 Applicability to existing vessels.

* * * * *

(d) For vessels contracted for prior to August 22, 2016, extinguishers with extinguishing capacities smaller than what is required in Table 118.500(a) of this part need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the OCMI. All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

■ 150. Revise § 118.120 to read as follows:

§ 118.120 Equipment installed but not required.

(a) Fire extinguishing equipment installed on a vessel in excess of the requirements of §§ 118.400 and 118.500 must be designed, constructed, installed, and maintained in a manner acceptable to the Commandant.

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that:

(1) Components are listed and labeled by a nationally recognized testing laboratory (NRTL) as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

■ 151. In § 118.310—

■ a. Remove the words "fire hose" wherever they appear and add, in their place, the word "firehose"; and

■ b. Add paragraph (e) to read as follows:

§ 118.310 Fire main and hydrants.

* * * * *

(e) Spanner wrenches must be provided for each fire hydrant required by this regulation. Existing vessels must comply with this requirement by January 18, 2017.

■ 152. In § 118.320, revise the section heading and paragraph (b)(1) to read as follows:

§ 118.320 Firehoses and nozzles.

* * * * *

(b) * * *

(1) Be lined commercial firehose that conforms to UL 19 "Standard for Safety for Lined Fire Hose and Hose Assemblies" (incorporated by reference, see § 114.600 of this chapter), or hose that is listed and labeled by an independent laboratory recognized by the Commandant as being equivalent in performance;

* * * * *

■ 153. In § 118.400—

■ a. In paragraph (b)(3), remove the text "B–II" and add, in its place, the text "40–B";

■ b. In paragraphs (b)(5)(i), (b)(5)(ii), and (b)(5)(iii), remove the word "shall" and add, in its place, the word "must";

■ c. In paragraph (c) introductory text, after the words "must be equipped with a", remove the words "fire detecting system" and add, in their place, the words "fire detection and alarm system"; and after the words "that is installed in accordance with", remove the text "§ 76.27" and add, in its place, the text "part 76";

■ d. In paragraph (d), remove the text "§ 118.425 of this part" and add, in its place, the text " § 118.425";

■ e. Revise paragraph (e);

■ f. In paragraph (f), after the words "a manual alarm system that meets the requirements in", remove the text "§ 76.35" and add, in its place, the text "part 76";

■ g. Revise paragraph (g); and

■ h. In paragraph (h), after the words "that meets the requirements of", remove the text "§ 76.23" and add, in its place, the text "part 76".

The revisions read as follows:

§ 118.400 Where required.

* * * * *

(e) Except for continuously manned operating stations as allowed by paragraph (f) of this section, each accommodation space, control space, and service space must be fitted with the following systems:

(1) A smoke actuated fire detection system of a type approved by the Commandant that is installed in accordance with 46 CFR part 76; and

(2) A manual alarm system that meets the requirements in 46 CFR part 76.

* * * * *

(g) An enclosed vehicle space must be fitted with an automatic sprinkler system that meets the requirements of 46 CFR part 76; and

(1) A fire detection system of a type approved by the Commandant that is installed in accordance with 46 CFR part 76; or

(2) A smoke detection system of a type approved by the Commandant that is installed in accordance with 46 CFR part 76.

§ 118.410 [Amended]

■ 154. Amend § 118.410 as follows:

■ a. In paragraph (f)(5)(i), after the words "must be equal to the gross volume of the system", add the words "in cubic meters"; remove the number "160" and add, in its place, the number "0.624"; remove the number "192" and add, in its place, the number "0.749"; and

■ b. In paragraph (f)(6)(i), remove the number "480" and add, in its place, the number "1.88".

■ 155. Revise § 118.500 to read as follows:

§ 118.500 Required number, type, and location.

(a) Each portable fire extinguisher on a vessel must be of a type approved by the Commandant. The minimum number of portable fire extinguishers required on a vessel must be acceptable to the cognizant OCMI, but must be not less than the minimum number required by Table 118.500(a) of this section and other provisions of this section.

(b) Table 118.500(a) of this section indicates the minimum required number and type of extinguisher for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 118.500(a)—REQUIRED PORTABLE FIRE EXTINGUISHERS

Space	Minimum required rating	Quantity and location
Operating station	10–B:C	1.
Machinery space	40–B:C	1 in the vicinity of the exit.
Open vehicle deck	40–B	1 for every 10 vehicles.
Accommodation space	2–A	1 each for each 2,500 sq ft or fraction thereof.
Galley	40–B:C	1.
Pantry, concession stand	2–A	1 in the vicinity of the exit.

(c) A vehicle deck without a fixed sprinkler system and exposed to weather must have one 40–B portable fire extinguisher for every 10 vehicles, located near an entrance to the space.

(d) The frame or support of each semi-portable fire extinguisher permitted by paragraph (c) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

PART 122—OPERATIONS

■ 156. The authority citation for part 122 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 157. Amend § 122.612 as follows:

■ a. Revise paragraphs (d) and (e);

■ b. Remove paragraph (g);

■ c. Redesignate paragraph (h) as new paragraph (g); and

■ d. In newly redesignated paragraph (g), after the words "or as otherwise required by the", remove the word "cognizant"; and following after the words "installed, that agent" remove the word "shall" and add, in its place, the word "must".

The revisions read as follows:

§ 122.612 Fire protection equipment.

* * * * *

(d) A manual fire alarm pull station must be conspicuously marked as such in clearly legible letters, and include brief, clear instructions for operation.

(e) An indicator for a fire detection and alarm system must be conspicuously marked in clearly legible letters "FIRE ALARM".

* * * * *

PART 125—GENERAL

■ 158. The authority citation for part 125 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; sec. 617, Pub. L. 111–281, 124 Stat. 2905; Department of Homeland Security Delegation No. 0170.1.

■ 159. In § 125.100, revise paragraph (f) to read as follows:

§ 125.100 Applicability.

* * * * *

(f) The regulations in this subchapter have preemptive effect over State or local regulations in the same field.

* * * * *

■ 160. In § 125.180, revise paragraphs (i)(2), (j) introductory text, and (j)(1) to read as follows:

§ 125.180 Incorporation by reference.

* * * * *

(i) * * *

(2) NFPA 70, National Electrical Code, 2011 Edition, IBR approved for §§ 129.320(e), 129.340(d) and (n), and 129.370(c).

* * * * *

(j) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001, IBR approved for § 132.130.

* * * * *

PART 132—FIRE-PROTECTION EQUIPMENT

■ 161. The authority citation for part 132 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307; sec. 617, Pub. L. 111–281, 124 Stat. 2905; Department of Homeland Security Delegation No. 0170.1.

§ 132.210 [Removed]

■ 162. Remove § 132.210.

■ 163. Amend § 132.220 as follows:

■ a. In paragraph (a), remove the word "semiportable" and add, in its place, the word "semi-portable";

■ b. Revise Table 132.220;

■ c. Redesignate paragraphs (b) through (f) as paragraphs (c) through (g), respectively;

■ d. Add new paragraph (b);

■ e. In newly redesignated paragraphs (c) and (g), remove the word "semiportable" wherever it appears and add, in its place, the word "semi-portable"; and

■ f. In newly redesignated paragraph (e), remove the words "fire hose" and add, in their place, the word "firehose".

The revision and addition read as follows:

§ 132.220 Installation.

* * * * *

TABLE 132.220—REQUIRED PORTABLE AND SEMI-PORTABLE FIRE EXTINGUISHERS

Space	Minimum required rating	Number and placement
Safety areas: Communicating passageways	2–A	1 in each main passageway, not more than 45.7 m (150 ft) apart (permissible in stairways).
Pilothouse	20–B:C	2 in the vicinity of the exit.
Service spaces: Galleys	40–B:C	1 for each 230 sq m (2,500 sq ft) or fraction thereof, suitable for hazards involved.
Paint lockers	40–B	1 outside space, in the vicinity of the exit.
Accessible baggage and storerooms	2–A	1 for each 230 sq m (2,500 sq ft) or fraction thereof, located in the vicinity of the exits, either inside or outside spaces.
Workshops and similar spaces	2–A	1 outside space in the vicinity of the exit.
Machinery spaces: Internal-combustion propulsion-machinery	40–B:C	1 for each 1,000 brake horsepower, but not fewer than 2 and more than 6.
	120–B	1 required.[1] [2]
Electric propulsion motors or generators of open type	40–B:C	1 for each propulsion motor or generator unit.
Auxiliary spaces: Internal combustion	40–B	1 outside space in the vicinity of the exit.[2]
Electric motors and emergency generators	40–B:C	1 outside space in the vicinity of the exit.[2]
Spares	2–A	10 percent of the required number rounded up.
	40–B:C	10 percent of the required number rounded up.

[1] Not required where a fixed gaseous fire extinguishing system is installed.

[2] Not required on vessels of less than 300 GT.

(b) Table 132.220 of this section indicates the minimum required number and type of extinguishers for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

* * * * *

§ 132.230 [Removed and Reserved]

■ 164. Remove and reserve § 132.230.

■ 165. Revise § 132.240 to read as follows:

§ 132.240 Stowage of semi-portable fire extinguishers.

The frame or support of each semi-portable fire extinguisher must be secured to prevent the extinguisher from shifting in heavy weather.

■ 166. Add § 132.250 to subpart B to read as follows:

§ 132.250 Locations and number of fire extinguishers required for vessels constructed prior to August 22, 2016.

Vessels contracted for prior to August 22, 2016, must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities smaller than are required in Table 132.220 of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

■ 167. Revise § 132.340 to read as follows:

§ 132.340 Equipment installed although not required.

(a) A vessel may install fire extinguishing equipment beyond that required by this subchapter, unless the excess equipment in any way endangers the vessel or the persons aboard. This equipment must be listed and labeled by an independent, nationally recognized testing laboratory (NRTL) as that term is defined in 46 CFR 161.002–2, and must be designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance.

(b) Use of non-approved fire detection systems may be acceptable as excess equipment, provided that:

(1) Components are listed and labeled by an NRTL as that term is defined in 46 CFR 161.002–2, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

PART 147—HAZARDOUS SHIPS' STORES

■ 168. The authority citation for part 147 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 169. Amend § 147.1 by revising the section heading and paragraph (d) to read as follows:

§ 147.1 Purpose and applicability.

* * * * *

(d) The regulations in this subchapter (46 CFR parts 147, 147A, and 148) have preemptive effect over State or local regulations in the same field.

■ 170. In § 147.7—

■ a. Redesignate paragraphs (d) through (f), as paragraphs (e) through (g), respectively;

■ b. Add new paragraph (d); and

■ c. Revise redesignated paragraphs (e), (f), and (g).

The addition and revisions read as follows:

§ 147.7 Incorporation by reference.

* * * * *

(d) Compressed Gas Association, Inc. (CGA), 14501 George Carter Way, Suite 103, Chantilly, Virginia 20151, 703–788–2700, *http://www.cganet.com.*

(1) CGA C–6–2007, Standards for Visual Inspection of Steel Compressed Gas Cylinders, Tenth Edition, 2007, IBR approved for § 147.65(b).

(2) [Reserved]

(e) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2008 Edition, IBR approved for §§ 147.66(c) and 147.67(c).

(2) NFPA 12A, Standard on Halon 1301 Fire Extinguishing Systems, 2009 Edition, effective July 18, 2008, IBR approved for § 147.65(b).

(f) Public Health Service (PHS), Department of Health and Human Services (DHHS), Superintendent of Documents, U.S. Government Printing Office, 710 North Capitol Street NW., Washington, DC 20401, 866–512–1800, *http://www.gpo.gov.*

(1) DHHS Publication No. PHS 84–2024, The Ship's Medicine Chest and Medical Aid at Sea, revised 1984, IBR approved for § 147.105.

(2) [Reserved]

(g) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 30, Standard for Metal Safety Cans, 7th Ed., revised March 3, 1987, ("UL 30"), IBR approved for § 147.45(f).

(2) UL 1185, Standard for Portable Marine Fuel Tanks, Second Edition, revised July 6, 1984, ("UL 1185"), IBR approved for § 147.45(f).

(3) UL 1313, Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., revised March 22, 1985, ("UL 1313"), IBR approved for § 147.45(f).

(4) UL 1314, Standard for Special-Purpose Containers, 1st Ed., revised February 7, 1984, ("UL 1314"), IBR approved for § 147.45(f).

■ 171. Revise § 147.65 to read as follows:

§ 147.65 Carbon dioxide and Halon fire extinguishing systems.

(a) Carbon dioxide cylinders forming part of a fixed fire extinguishing system must be maintained as follows:

(1) Cylinders must be retested at least every 12 years. If a cylinder is discharged and more than 5 years have elapsed since the last test, it must be retested before recharging.

(2) Carbon dioxide cylinders must be rejected for further service when they:

(i) Leak;

(ii) Are dented, bulging, severely corroded, or otherwise in a weakened condition;

(iii) Have lost more than 5 percent of their tare weight; or

(iv) Have been involved in a fire.

(3) Cylinders which have contained gas agents for fixed fire extinguishing systems and have not been tested within 5 years must not be used to contain another compressed gas onboard a vessel, unless the cylinders are retested and re-marked in accordance with § 147.60(a)(3) and (4).

(4) Flexible connections between cylinders and distribution piping of semi-portable or fixed carbon dioxide fire extinguishing systems and discharge hoses in semi-portable carbon dioxide fire extinguishing systems must be replaced or tested at a pressure of 6.9 MPa (1,000 psig). At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a 2-minute period. The test must be performed when the cylinders are retested.

(b) Halon cylinders forming part of a fixed fire extinguishing system must be maintained as follows:

(1) The agent weight must be ascertained annually by one of the methods identified in paragraphs (b)(2) through (b)(4) of this section. Measured weights or liquid levels must be recorded and compared with the recommended fill levels and previous readings. If cylinder weight or liquid

level, adjusted for temperature, shows a 5 percent loss of pressure, the cylinder must be refilled. If cylinder pressure, adjusted for temperature, shows a 10 percent loss of pressure, the cylinders must be refilled.

(2) The cylinders may be removed from the mounting racks and weighed.

(3) The contents of cylinders fitted with integral floating dipstick liquid level indicators may be measured with the dipstick indicator.

(4) With approval of the cognizant Officer in Charge, Marine Inspection (OCMI), liquid level indication measures such as ultrasonic/audio gauging or radioisotope gauging may be used, provided that all of the following conditions are met:

(i) Measurement equipment is calibrated for the cylinder wall thickness and Halon liquid.

(ii) Calibration is verified by weighing the cylinders that indicate the lowest levels of Halon in each release group, but in no case less than 10 percent of the inspected cylinders in each release group.

(iii) The acceptable liquid level is identified by the original system installer or coincides with all other cylinder liquid levels of the same release group.

(iv) Measurements are made by personnel skilled in ultrasonic/audio gauging or radioisotope gauging techniques.

(5) Effective 12 years after commissioning of the system or 5 years after the last hydrostatic test, whichever is later, the following inspections must be completed every 5 years:

(i) Cylinders continuously in service without discharging must be removed from mounting racks and given a complete external visual inspection. The inspection must be conducted in accordance with the CGA Pamphlet C–6 (incorporated by reference, see § 147.7).

(ii) The volume of agent must be ascertained either by removing and weighing the cylinder or by floating liquid level indicators, integral with the cylinder construction, taking into account adjustments necessary for cylinder temperature and pressure.

(6) Flexible connections between cylinders and distribution piping of fixed Halon fire extinguishing systems must be:

(i) Visually inspected for damage, corrosion, or deterioration every year and replaced if found unserviceable; and

(ii) Inspected and tested in accordance with NFPA 12A, paragraph 6.3.1 (incorporated by reference, see § 147.7) except that hydrostatic testing must be performed every 12 years instead of every 5 years.

(7) During any inspection, cylinders must be removed from service if they:

(i) Leak;

(ii) Are dented, bulging, severely corroded, or otherwise in a weakened condition; or

(iii) Have been involved in a fire.

(c) Cylinders that have contained carbon dioxide or Halon and have not been tested within 5 years must not be used to contain another compressed gas onboard a vessel, unless the cylinder is retested and re-marked in accordance with § 147.60(a)(3) and (4).

PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

■ 172. The authority citation for part 159 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

■ 173. Add § 159.001–1(b) to read as follows:

§ 159.001–1 Purpose.

* * * * *

(b) The regulations in this subchapter (parts 159 through 164) have preemptive effect over State or local regulations in the same field.

■ 174. Amend § 159.001–3 to add the definitions of "Marine Equipment Directive (MarED)" and "Mutual Recognition Agreement (MRA)", in alphabetical order, as follows:

§ 159.001–3 Definitions.

* * * * *

Marine Equipment Directive (MarED) means the European Community Council Directive 96/98/EC of December 20, 1996 on marine equipment, as amended.

* * * * *

Mutual Recognition Agreement (MRA) means an agreement between the United States and other Maritime Administrations or organized associations, such as the European Community and the European Free Trade Association that specifies equipment approval and monitoring processes through which parties of the MRA agree to approve equipment on behalf of all parties. An MRA allows reciprocal approval and acceptance of equipment between all parties.

* * * * *

■ 175. Revise § 159.001–4 to read as follows:

§ 159.001–4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) Resolution A.739(18), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 22, 1993, IBR approved for § 159.001–3.

(2) [Reserved]

(c) International Organization for Standardization, ISO Central Secretariat BIBC II, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, *http://www.iso.org.*

(1) ISO/IEC 17025:2005(E), International Standard: General requirements for the competence of testing and calibration laboratories, Second edition, 15 May 2005 ("ISO/IEC 17025"), IBR approved for § 159.010–3(a).

(2) [Reserved]

■ 176. Add subpart 159.003 to read as follows:

Subpart 159.003—Approvals Under Mutual Recognition Agreements (MRA)

Sec.

159.003–1 Purpose.
159.003–3 Acceptance of foreign approvals under a Mutual Recognition Agreement (MRA).
159.003–5 Approval by the Coast Guard under a Mutual Recognition Agreement (MRA).
159.003–7 Multiple approval numbers.
159.003–9 Products covered by Mutual Recognition Agreement (MRAs).

Subpart 159.003—Approvals Under Mutual Recognition Agreements (MRA)

§ 159–003–1 Purpose.

This subpart contains the procedures for obtaining Coast Guard approval under a Mutual Recognition Agreement.

§ 159–003–3 Acceptance of foreign approvals under a Mutual Recognition Agreement (MRA).

A Coast Guard approval issued by a foreign authority in accordance with the provisions of an effective MRA is acceptable for any application where the regulations in this chapter require Coast Guard approval.

§ 159–003–5 Approval by the Coast Guard under a Mutual Recognition Agreement (MRA).

(a) Manufacturers must specify in writing that foreign approval under an MRA is requested.

(b) The Coast Guard Certificate of Approval will clearly identify as specified in the MRA that the product is approved to the foreign requirements under the MRA.

§ 159–003–7 Multiple approval numbers.

A product will not be issued a Coast Guard approval number by the Coast Guard if it already holds a Coast Guard approval number issued by a foreign authority under a Mutual Recognition Agreement.

§ 159–003–9 Products covered by Mutual Recognition Agreements (MRAs).

A complete list of equipment and materials approved by the Coast Guard under an MRA, as well as detailed information on marking and identifying items approved by foreign authorities under an MRA, is available online at *http://cgmix.uscg.mil/Equipment/Default.aspx.*

■ 177. Amend § 159.010–3 by revising paragraph (a)(2) to read as follows:

§ 159.010–3 Independent laboratory: Standards for acceptance.

(a) * * *

(2) Possess or have access to the apparatus, facilities, personnel, and calibrated instruments that are necessary to inspect and test the equipment or material under the applicable subpart. In addition, for testing conducted on or after July 1, 2012, on equipment subject to SOLAS requirements, they must have ISO/IEC 17025 (incorporated by reference, see § 159.001–4) accreditation from an accreditation body that is a full member of the International Laboratory Accreditation Cooperation (ILAC) or a recognized accreditation body by the National Cooperation for Laboratory Accreditation (NACLA);

* * * * *

PART 160—LIFESAVING EQUIPMENT

■ 178. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

Subpart 160.900 [Removed]

■ 179. Remove subpart 160.900.

PART 161—ELECTRICAL EQUIPMENT

■ 180. The authority citation for part 161 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

Subpart 161.002—Fire Detection Systems

■ 181. Revise the heading for subpart 161.002 to read as set forth above.

■ 182. Revise § 161.002–1 to read as follows:

§ 161.002–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Lifesaving and Fire Safety Division (CG–ENG–4), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) FM Global, 1151 Boston-Providence Turnpike, P.O. Box 9102, Norwood, MA 02062, 781–762–4300, *http://www.fmglobal.com.*

(1) ANSI/FM Approvals 3260, American National Standard for Radiant Energy-Sensing Fire Detectors for Automatic Fire Alarm Signaling, February 2004 (''ANSI/FM 3260''), IBR approved for § 161.002–6(b).

(2) [Reserved]

(c) International Electrotechnical Commission (IEC), 3, rue de Varembe, P.O. Box 131, CH–1211 Geneva 20—Switzerland, +41 22 919 02 11, *http://www.iec.ch.*

(1) IEC 60092–504:2001(E), Electrical Installations in Ships—Part 504: Special Features—Control and Instrumentation, Third edition, March 2001, IBR approved for § 161.002–6(c) and (d), and § 161.002–15(d).

(2) [Reserved]

(d) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) FSS Code, International Code for Fire Safety Systems, Second Edition, 2007 Edition (Resolution MSC.98(73)), IBR approved for § 161.002–15(b).

(2) [Reserved]

(e) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 72, National Fire Alarm and Signaling Code, 2010 Edition, effective August 26, 2009 (''NFPA 72''), IBR approved for § 161.002–10(b).

(2) [Reserved]

(f) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 38, Standard for Safety for Manual Signaling Boxes for Fire Alarm Systems, Eighth Edition, dated July 3, 2008, as amended through December 11, 2008, IBR approved for § 161.002–6(b).

(2) UL 268, Standard for Safety for Smoke Detectors for Fire Alarm Systems, Sixth Edition, dated August 14, 2009, IBR approved for § 161.002–6(b).

(3) UL 464, Standard for Safety for Audible Signal Appliances, Ninth Edition, dated April 14, 2009, as amended through April 16, 2012, IBR approved for § 161.002–6(b).

(4) UL 521, Standard for Safety for Heat Detectors for Fire Protective Signaling Systems, Seventh Edition, dated February 19, 1999, as amended through October 3, 2002, IBR approved for § 161.002–6(b).

(5) UL 864, Standard for Safety for Control Units and Accessories for Fire Alarm Systems, Ninth Edition, dated September 30, 2003, as amended through January 12, 2011, IBR approved for §§ 161.002–6(b) and 161.002–15(d).

(6) UL 1480, Standard for Safety for Speakers for Fire Alarm, Emergency, and Commercial and Professional Use, Fifth Edition, dated January 31, 2003, as amended through June 23, 2010, IBR approved for § 161.002–6(b).

(7) UL 1971, Standard for Safety for Signaling Devices for the Hearing Impaired, Third Edition, approved November 29, 2002, as amended through October 15, 2008, IBR approved for § 161.002–6(b).

■ 183. Revise § 161.002–2 to read as follows:

§ 161.002–2 Definitions.

In this subpart, the term—

Device means individual components (*e.g.* detectors, control panels, alarms, etc.) that are used to comprise a fire detection system. Devices may receive Coast Guard approval in accordance with § 161.002–19.

Fire detection or fire detection and alarm systems system means a complete detection system that is designed to give warning of the presence of fire or smoke in the protected spaces. A complete system includes normal and emergency power supplies, control units, remote annunciator panels, fire detectors and/or smoke detectors, manual pull stations, and audible and visual alarms, which are distinct from the alarms of any other system not indicating fire.

Listed means equipment or materials included in a list published by an organization that is an accepted independent laboratory, as defined in 46 CFR 159.010, or a nationally recognized testing laboratory, as set forth in 29 CFR 1910.7, whose listing states that either the equipment or material meets appropriate designated standards.

Nationally recognized testing laboratory (NRTL) means an organization that the Occupational Safety and Health Administration (OSHA) has recognized as meeting the requirements in 29 CFR 1910.7. These requirements are for the capability, control programs, complete independence, and reporting and complaint-handling procedures to test and certify specific types of products for workplace safety. This means, in part, that an organization must have the necessary capability both as a product safety testing laboratory and as a product certification body to receive OSHA recognition as an NRTL.

Sample extraction smoke detection systems means systems that collect and analyze air samples from protected spaces in order to detect products of combustion. A complete system includes a control unit, a blower box, accumulators, and a piping system with associated fittings.

§ 161.002–3 [Removed and Reserved]

■ 184. Remove and reserve § 161.002–3.

■ 185. Revise § 161.002–4 to read as follows:

§ 161.002–4 General requirements.

(a) The purpose of fire detection systems is to give warning of the presence of fire in the protected spaces. To meet this end, the basic requirements of these systems are reliability, sturdiness, simplicity of design, ease of servicing, and the ability to withstand shipboard shock and vibration and the adverse effects of sea humidity. All fire detection systems must be designed, constructed, tested, marked, and installed according to the applicable standards as incorporated by reference in § 161.002–1 and 46 CFR chapter I, subchapter J (Electrical Engineering) of this chapter.

(b) Approvals for detection systems issued before July 22, 2017 will remain valid until July 22, 2021.

(c) Detection systems installed, with a valid approval, before July 22, 2021 may be maintained onboard vessels and repaired as indicated in 46 CFR 76.27–80(d).

■ 186. Add § 161.002–6 to read as follows:

§ 161.002–6 Testing Requirements.

(a) Devices must be tested and listed for fire service by an accepted independent laboratory, as accepted in accordance with § 159.010 of this subchapter, or by a NRTL as set forth in 29 CFR 1910.7.

(b) Each fire detection device must comply with the following standards (incorporated by reference, see § 161.002–1) as appropriate:

(1) Control units—UL 864;

(2) Heat detectors—UL 521;

(3) Smoke detectors—UL 268;

(4) Flame detectors—ANSI/FM 3260;

(5) Audible alarms—UL 464 or UL 1480;

(6) Visual alarms—UL 1971; and

(7) Manual Signaling Boxes—UL 38.

(c) All devices must be tested by an accepted independent laboratory, as defined in § 159.010 of this subchapter, to meet the marine environment testing requirements in Table 161.002–6(c) of this section. The test parameters are found in IEC 60092–504 (incorporated by reference, see § 161.002–1).

TABLE 161.002–6(c)—MARINE ENVIRONMENTAL TESTING REQUIREMENTS

IEC 60092–504 Environmental type test	Category 1	Category 2	Category 3
	All spaces not Category 2 or 3	Open deck or open to weather	Spaces containing navigation or communication equipment
1—Visual inspection	X	X	X
2—Functional test	X	X	X
3—High voltage test	X	X	X
4a—Power supply variations	X	X	X
4b—Power supply failure	X	X	X
5—Insulation resistance	X	X	X
6—Cold with gradual temp. change	X (5 °C)	X (−25 °C)	X (5 °C)
7—Dry heat with gradual temp. change	X (55 °C)	X (55 °C)	X (55 °C)
8—Damp heat, cyclic	X	X	X
9—Salt mist		X	
10—Vibration (sinusoidal)	X	X	X
11b—Inclination, dynamic	[1] X	[1] X	[1] X
13—Electrostatic discharge	X	X	X
14—Electromagnetic field	X	X	X
15—Conducted low frequency	X	X	X
16(a)—Conducted radio frequency (3 V rms)	X		
16(b)—Conducted radio frequency (10 V rms)		X	X
17—Burst/fast transients	X	X	X
18—Surge/slow transients	X	X	X
19(a)—Radiated emission (general power)	X		
19(b)—Radiated emission (bridge and deck zone)		X	X
20(a)—Conducted emission (general power)	X		
20(b)—Conducted emission (bridge and deck zone)		X	X

[1] This test only needs to be completed if the device is in a location with moving mechanical parts.

(d) All fire detection system control units and remote annunciators must have enclosure protection as outlined in part 5 of IEC 60092–504 (incorporated by reference, see § 161.002–1) if the requirements exceed those of 46 CFR 111.01–9. Otherwise, 46 CFR 111.01–9 must be complied with.

■ 187. Revise § 161.002–8(a) to read as follows:

§ 161.002–8 Fire detection systems, general requirements.

(a) *General.* A fire detection system must consist of a power supply; a control unit on which visible and audible fire and trouble signaling indicators are located; fire and/or smoke detectors; and fire and/or smoke detector circuits, as required, originating from the control unit. Power failure alarm devices may be separately housed from the control unit and may be combined with other power failure alarm systems when specifically approved.

* * * * *

■ 188. Revise § 161.002–9 to read as follows:

§ 161.002–9 Fire detection system, power supply.

The power supply for a fire detection system must meet the requirements of § 113.10–9 of this chapter.

■ 189. Revise § 161.002–10 to read as follows:

§ 161.002–10 Fire detection system control unit.

(a) *General.* The fire detection system control unit must meet the requirements of § 111.01–9 of this chapter.

(b) *Electrical supervision—Circuits.* The circuits must comply with Chapter 23 of NFPA 72 (incorporated by reference, see § 161.002–1), and must be Class A or Class X pathway.

§ 161.002–12 [Removed]

■ 190. Remove § 161.002–12.

§ 161.002–14 [Removed]

■ 191. Remove § 161.002–14.

■ 192. Revise § 161.002–15 to read as follows:

§ 161.002–15 Sample extraction smoke detection systems.

(a) *General.* The sample extraction smoke detection system must consist of a means for continuously exhausting an air sample from the protected spaces and testing the air for contamination with smoke, together with visual and audible alarms for indicating the presence of smoke.

(b) *Design.* The sample extraction smoke detection system must be designed and capable of being installed in accordance with 46 CFR chapter I, subchapter J (Electrical Engineering) and the FSS Code (incorporated by reference, see § 161.002–1).

(c) *Power supply.* The power supply for the sample extraction smoke detection system must meet the requirements of § 113.10–9 of this chapter.

(d) *Control unit standards.* The control unit must be listed by either a NRTL as set forth in 29 CFR 1910.7 or an independent laboratory that is accepted by the Commandant under part 159 of this chapter. The listing must be to the standards specified in UL 864 and tested to the parameters found in IEC 60092–504 (both incorporated by reference, see § 161.002–1).

■ 193. Amend § 161.002–18 as follows:

■ a. Revise the section heading;

■ b. In paragraph (a) introductory text, remove the text "(CG–ENG)" and add, in its place, the text "(CG–ENG–4)";

■ c. In paragraph (a)(2), after the words "including information concerning installation,", add the words "maintenance, limitations,";

■ d. Revise paragraph (a)(3);

■ e. Redesignate paragraph (a)(4) as paragraph (a)(5);

■ f. Add new paragraph (a)(4);

■ g. In newly redesignated paragraph (a)(5) introductory text, remove the word "annunicator" and add, in its place, the word "annunciator";

■ h. In paragraph (c), remove the word "shall" and add, in its place, the word "must"; and after the words "in paragraphs" remove the text "(a)(4)(i) through (a)(4)(iii)" and add, in its place, the text "(a)(5)(i) through (a)(5)(iii)";

■ i. In paragraph (d)(2), after the word "paragraph", remove the text "(a)(4)" and add, in its place, the text "(a)(5)";

■ j. In paragraph (d)(3), remove the words "for the testing and listing or certification of fire-protective systems indicating compliance with the standards and compatibility with the system" and add, in their place, the words ", or an NRTL as set forth in 29 CFR 1910.7 to document compliance with § 161.002–6"; and

■ k. In paragraph (e), after the words "in paragraphs" remove the text "(a)(4)(i) through (a)(4)(iii)" and add, in its place, the text "(a)(5)(i) through (a)(5)(iii)".

The revisions and addition read as follows

§ 161.002–18 System method of applications for type approval.

(a) * * *

(3) Proof of listing the system devices meeting the requirements of § 161.002–4(b)(2).

(4) One copy of the complete test report(s) meeting the requirements of § 161.002–6 generated by an independent laboratory accepted by the Commandant under part 159 of this chapter or an NRTL as set forth in 29 CFR 1910.7. A current list of Coast Guard accepted laboratories may be obtained from the following Web site: *http://cgmix.uscg.mil/eqlabs/.*

* * * * *

■ 194. Add § 161.002–19 to read as follows:

§ 161.002–19 Device method of application for type approval.

(a) The manufacturer must submit the following material to Commandant (CG–ENG–4), U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509 or they may electronically submit material to *typeapproval@uscg.mil*:

(1) A formal written request that the device be reviewed for approval.

(2) Three copies of the device's instruction manual, including information concerning installation, maintenance, limitations, programming, operation, and troubleshooting.

(3) Proof of listing the device meeting the requirements of § 161.002–4(b)(2).

(4) One copy of the complete test report(s) meeting the requirements of § 161.002–6 generated by an independent laboratory accepted by the Commandant under part 159 of this chapter or an NRTL as set forth in 29 CFR 1910.7. A current list of Coast Guard accepted laboratories may be obtained from the following Web site: *http://cgmix.uscg.mil/eqlabs/.*

(b) To apply for a revision, the manufacturer must submit—

(1) A written request under paragraph (a) of this section;

(2) Updated documentation under paragraph (a)(2) of this section;

(3) Proof of listing the device meeting the requirements of § 161.002–4(b)(2); and

(4) A report by an independent laboratory accepted by the Commandant under part 159 of this chapter or an NRTL as set forth in 29 CFR 1910.7 is required to document compliance with § 161.002–6.

(c) If the Coast Guard approves the device or a revision to a device, it issues a Certificate of Approval, normally valid for a 5-year term.

PART 162—ENGINEERING EQUIPMENT

■ 195. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.

351; Department of Homeland Security Delegation No. 0170.1.

Subpart 162.027—Combination Firehose Nozzles

■ 196. Revise the heading for subpart 162.027 to read as set forth above.

■ 197. Redesignate §§ 162.027–1, 162.027–2, and 162.027–3 as §§ 162.027–2, 162.027–3, and 162.027–4, respectively, and add new § 162.027–1 to read as follows:

§ 162.027–1 Scope.

This subpart prescribes requirements for approval of combination firehose nozzles.

■ 198. Revise newly redesignated § 162.027–2 to read as follows:

§ 162.027–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, 877–909–2786, *http://www.astm.org.*

(1) ASTM F1546/F1546 M–96 (Reapproved 2012), Standard Specification for Fire Hose Nozzles, approved May 1, 2012, (“ASTM F 1546”), IBR approved for §§ 162.027–3(a) through (c), and 162.027–4(a) and (d).

(2) [Reserved]

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 1964 Standard for Spray Nozzles, 2008 Edition, effective December 31, 2007, IBR approved for §§ 162.027–3(a) through (c), and 162.027–4(a) and (d).

(2) [Reserved]

■ 199. Revise newly redesignated § 162.027–3 to read as follows:

§ 162.027–3 Design, construction, testing, and marking requirements.

(a) Each combination solid stream and water spray firehose nozzle required to be approved under the provisions of this subpart must be of brass or bronze, except for hardware and other incidental parts, which may be of rubber, plastic, or stainless steel, and designed, constructed, tested, and marked in accordance with the requirements of ASTM F 1546 or NFPA 1964 (incorporated by reference, see § 162.027–2).

(b) All inspections and tests required by ASTM F 1546 or NFPA 1964 must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (CG–ENG–4).

(c) The independent laboratory must prepare a report on the results of the testing and must furnish the manufacturer with a copy of the test report upon completion of the testing required by ASTM F 1546 or NFPA 1964.

■ 200. Amend newly redesignated § 162.027–4 by revising paragraph (a) and adding paragraphs (c) through (g) to read as follows:

§ 162.027–4 Approval procedures.

(a) Firehose nozzles designed, constructed, tested, and marked in accordance with ASTM F 1546 or NFPA 1964 (incorporated by reference, see § 162.027–2) are considered to be approved under the provisions of this chapter.

* * * * *

(c) A follow-up program must be established and maintained to ensure that no unauthorized changes have been made to the design or manufacture of type approved firehose nozzles. Acceptable follow-up programs include factory inspection programs administered by the accepted independent laboratory that performed the initial inspections and tests relied on by the type approval holder, or special configuration control programs implemented through a quality control flow chart and core procedures administered by the manufacturer and certified by an international standards agency such as the International Organization for Standardization (ISO).

(d) Applicants seeking type approval of firehose nozzles must submit:

(1) A cover letter requesting type approval of the equipment;

(2) A test report from the accepted independent laboratory showing compliance of the firehose nozzle with ASTM F 1546 or NFPA 1964;

(3) A copy of the contract for a follow-up program with the accepted independent laboratory or evidence of an ISO 9001 certified special configuration control program or similar program implemented through a quality control flow chart and core procedure; and

(4) Documentation of the firehose nozzle, including an exterior drawing, assembly drawing, components list, and bill of material.

(e) All documentation must be either mailed to Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509 or electronically submitted to *typeapproval@uscg.mil.*

(f) Upon evaluation of the submittal package and approval by the Commandant, a Coast Guard Certificate of Approval will be issued valid for 5 years so long as the follow-up program for the firehose nozzle is maintained.

(g) Upon application, a Certificate of Approval for a firehose nozzle may be renewed for successive 5-year periods without further testing so long as no changes have been made to the products, the follow-up program has been maintained, and no substitutions of or changes to the standards listed in § 162.027–2 have been made.

■ 201. Revise § 162.028–1 to read as follows:

§ 162.028–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 162.028–2(a).

(2) [Reserved]

(c) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 8, Standard for Safety for Water Based Agent Fire Extinguishers, Sixth Edition, dated February 28, 2005, as amended through July 27, 2010, IBR approved for § 162.028–3(a).

(2) UL 154, Standard for Safety for Carbon-Dioxide Fire Extinguishers, Ninth Edition, dated February 28, 2005, as amended through November 8, 2010, IBR approved for § 162.028–3(a).

(3) UL 299, Standard for Safety for Dry Chemical Fire Extinguishers, Eleventh Edition, dated April 13, 2012, IBR approved for § 162.028–3(a).

(4) UL 626, Standard for Safety for Water Fire Extinguishers, Eighth Edition, dated February 28, 2005, as amended through November 8, 2010, IBR approved for § 162.028–3(a).

(5) UL 711, Standard for Safety for Rating and Fire Testing of Fire Extinguishers, Seventh Edition, dated December 17, 2004, as amended through April 28, 2009, IBR approved for § 162.028–2(a) and 162.028–3(a).

(6) UL 2129, Standard for Safety for Halocarbon Clean Agent Fire Extinguishers, Second Edition, dated February 28, 2005, as amended through March 30, 2012, IBR approved for § 162.028–3(a).

■ 202. Amend § 162.028–2 by revising paragraph (a) to read as follows:

§ 162.028–2 Classification.

(a) Portable and semi-portable extinguishers must be marked with a combined number and letter designation. The letter designates the general class of fire for which the extinguisher is suitable as identified in NFPA 10 (incorporated by reference, see § 162.028–1). The number indicates the relative extinguishing potential of the device as rated by UL 711 (incorporated by reference, see § 162.028–1).

* * * * *

■ 203. Revise § 162.028–3 to read as follows:

§ 162.028–3 Requirements.

(a) In addition to the requirements of this subpart, every portable fire extinguisher must be tested and listed for marine use by a recognized laboratory as defined in 46 CFR 159.001–3, and must comply with the following standards (incorporated by reference, see § 162.028–1), as appropriate:

(1) UL 8;
(2) UL 154;
(3) UL 299;
(4) UL 626;
(5) UL 711; and
(6) UL 2129.

(b) Every portable fire extinguisher must be self-contained; when charged, it must not require any additional source of extinguishing agent or expellant energy for its operation during the time it is being discharged. It must weigh no more than 50 pounds when fully charged.

(c) Every portable fire extinguisher must be supplied with a suitable bracket which will hold the extinguisher securely in its stowage location on vessels or boats, and which is arranged to provide quick and positive release of the extinguisher for immediate use. During vibration testing, the extinguisher must be tested in the marine bracket.

(d) Every portable extinguisher may be additionally examined and tested to establish its reliability and effectiveness in accordance with the intent of this specification for a ''marine type'' portable fire extinguisher when considered necessary by the Coast Guard or by the recognized laboratory.

■ 204. Amend § 162.028–4 by revising paragraph (a) to read as follows:

§ 162.028–4 Marine type label.

(a) In addition to all other markings, every portable extinguisher must bear a label containing the Coast Guard approval number, thus: ''Marine Type USCG Type Approval No. 162.028/____.''

* * * * *

■ 205. Revise § 162.028–5 to read as follows:

§ 162.028–5 Recognized laboratories.

A list of recognized independent laboratories that can perform approval tests of portable fire extinguishers is available from the Commandant and online at *http://cgmix.uscg.mil.*

■ 206. Revise § 162.028–7 to read as follows:

§ 162.028–7 Procedure for listing and labeling.

(a) Manufacturers having models of extinguishers they believe are suitable for marine service may make application for listing and labeling of such product as a ''marine-type'' portable fire extinguisher by addressing a request directly to a recognized laboratory. The laboratory will inform the submitter as to the requirements for inspection, examinations, and testing necessary for such listing and labeling. All costs in connection with the examinations, tests, inspections, listing, and labeling are payable by the manufacturer.

(b) [Reserved]

Subpart 162.039—Extinguishers, Fire, Semi-portable, Marine Type

■ 207. Revise the heading for subpart 162.039 to read as set forth above.

■ 208. Revise § 162.039–1 to read as follows:

§ 162.039–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 162.039–2(a).

(2) [Reserved]

(c) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 8, Standard for Safety for Water Based Agent Fire Extinguishers, Sixth Edition, dated February 28, 2005, as amended through July 27, 2010, IBR approved for § 162.039–3(a).

(2) UL 154, Standard for Safety for Carbon-Dioxide Fire Extinguishers, Ninth Edition, dated February 28, 2005, as amended through November 8, 2010, IBR approved for § 162.039–3(a).

(3) UL 299, Standard for Safety for Dry Chemical Fire Extinguishers, Eleventh Edition, dated April 13, 2012, IBR approved for § 162.039–3(a).

(4) UL 626, Standard for Safety for Water Fire Extinguishers, Eighth

Edition, dated February 28, 2005, as amended through November 8, 2010, IBR approved for § 162.039–3(a).

(5) UL 711, Standard for Safety for Rating and Fire Testing of Fire Extinguishers, Seventh Edition, dated December 17, 2004, as amended through April 28, 2009, IBR approved for §§ 162.039–2(a) and 162.039–3(a).

(6) UL 2129, Standard for Safety for Halocarbon Clean Agent Fire Extinguishers, Second Edition, dated February 28, 2005, as amended through March 30, 2012, IBR approved for § 162.039–3(a).

■ 209. Revise § 162.039–2(a) to read as follows:

§ 162.039–2 Classification.

(a) Portable and semi-portable extinguishers must be marked with a combined number and letter designation. The letter designates the general class of fire for which the extinguisher is suitable as identified in NFPA 10 (incorporated by reference, see § 162.039–1). The number indicates the relative extinguishing potential of the device as rated by UL 711 (incorporated by reference, see § 162.039–1).

* * * * *

■ 210. Revise § 162.039–3 to read as follows:

§ 162.039–3 Requirements.

(a) In addition to the requirements of this subpart, every semi-portable fire extinguisher must be tested and listed for marine use by a recognized laboratory as defined in 46 CFR 159.001–3, and must comply with the following standards (incorporated by reference, see § 162.039–1), as appropriate:

(1) UL 8;
(2) UL 154;
(3) UL 299;
(4) UL 626;
(5) UL 711; and
(6) UL 2129.

(b) Every semi-portable fire extinguisher must be self-contained; when charged, it must not require any additional source of extinguishing agent or expellant energy for its operation during the time it is being discharged. It must weigh more than 50 pounds, when fully charged.

(c) Every semi-portable fire extinguisher must be supplied with a suitable bracket which will hold the extinguisher securely in its stowage location on vessels or boats, and which is arranged to provide quick and positive release of the extinguisher for immediate use.

(d) Every semi-portable extinguisher may be additionally examined and tested to establish its reliability and effectiveness in accordance with the intent of this specification for a "marine type" semi-portable fire extinguisher when considered necessary by the Coast Guard or by the recognized laboratory.

■ 211. Revise § 162.039–4 to read as follows:

§ 162.039–4 Marine type label.

(a) In addition to all other markings, every semi-portable extinguisher must bear a label containing the "marine type" listing manifest issued by a recognized laboratory. This label will include the Coast Guard approval number, thus: "Marine Type USCG Type Approval No. 162.039/___."

(b) All such labels are to be obtained only from the recognized laboratory and will remain under its control until attached to a product found acceptable under its inspection and labeling program.

■ 212. Revise § 162.039–5 to read as follows:

§ 162.039–5 Recognized laboratories.

(a) A list of recognized independent laboratories that can perform approval tests of semi-portable fire extinguishers is available from the Commandant and online at *http://cgmix.uscg.mil*.

(b) [Reserved]

■ 213. Revise § 162.039–7 (a) to read as follows.

§ 162.039–7 Procedure for listing and labeling.

(a) Manufacturers having models of extinguishers they believe are suitable for marine service may make application for listing and labeling of such product as a "marine type" semi-portable fire extinguisher by addressing a request directly to a recognized laboratory. The laboratory will inform the submitter as to the requirements for inspections, examinations, and testing necessary for such listing and labeling. All costs in connection with the examinations, tests, and inspections, listings and labelings are payable by the manufacturer.

* * * * *

■ 214. Add subpart 162.163 to read as follows:

Subpart 162.163—Portable Foam Applicators

Sec.

162.163–1 Scope.
162.163–2 Incorporation by reference.
162.163–3 Performance, design, construction, testing, and marking requirements.
162.163–4 Approval procedures.

Subpart 162.163—Portable Foam Applicators

§ 162.163–1 Scope.

This subpart prescribes requirements for approval of portable foam applicators, each consisting of a portable foam nozzle, eductor, pick-up tube, and a portable supply of foam concentrate, in ro-ro spaces and certain machinery spaces, as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 162.163–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com*.

(1) UL 162, Standard for Safety for Foam Equipment and Liquid Concentrates, Seventh Edition, dated March 30, 1994, as amended through October 10, 2014, IBR approved for §§ 162.163–3(d) through (f), and 162.163–4(a) and (c).

(2) [Reserved]

§ 162.163–3 Performance, design, construction, testing, and marking requirements.

(a) The portable foam applicator must produce foam suitable for extinguishing an oil fire at a minimum foam solution rate of 200 l/min (53 gpm).

(b) The portable foam applicator must have a portable tank containing 20 liters or more of foam concentrate, along with one 20-liter spare tank. Five gallon (19 liter) foam concentrate pails are an acceptable substitute for the 20-liter tanks.

(c) Requirements for carriage of portable foam applicators may be met by the carriage of either:

(1) Portable foam applicators in accordance with this subpart, with either integral or separate eductors of fixed percentage and foam concentrate designed, constructed, tested, marked, and approved in accordance with the provisions of this section; or

(2) Components and foam concentrate from deck and heli-deck foam systems approved under approval series 162.033 of this part. Suitable components include mechanical foam nozzles with pick-up tubes, and mechanical foam nozzles with separate inline eductors, along with the corresponding foam concentrate.

(d) Each portable foam applicator to be approved under the provisions of this subpart must be of brass or bronze, except for hardware and other incidental parts which may be of rubber, plastic, or stainless steel and, in combination with a foam concentrate, must be designed, constructed, tested, and marked in accordance with the requirements of UL 162 (incorporated by reference, see § 162.163–1).

(e) All inspections and tests required by UL 162 must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (CG–ENG–4) or at *http://cgmix.uscg.mil/eqlabs/*.

(f) The independent laboratory must prepare a report on the results of the testing and must furnish the manufacturer with a copy of the test report upon completion of the testing required by UL 162.

§ 162.163–4 Approval procedures.

(a) Portable foam applicators designed, constructed, tested, and marked in accordance with UL 162 (incorporated by reference, see § 162.163–1) are eligible for approval under the provisions of this chapter.

(b) A follow-up program must be established and maintained to ensure that no unauthorized changes have been made to the design or manufacture of type approved portable foam applicators. Acceptable follow-up programs include factory inspection programs administered by the accepted independent laboratory that performed the initial inspections and tests relied on by the type approval holder, or special configuration control programs implemented through a quality control flow chart and core procedures administered by the manufacturer and certified by an international standards agency such as the International Organization for Standardization (ISO).

(c) Applicants seeking type approval of portable foam applicators must submit:

(1) A cover letter requesting type approval of the equipment;

(2) A test report from the accepted independent laboratory showing compliance of the portable foam applicator with UL 162;

(3) A copy of the contract for a follow-up program with the accepted independent laboratory; and

(4) Documentation of the portable foam applicator, including an exterior drawing, assembly drawing, components list, and bill of material.

(d) All documentation must either be mailed to Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509 or electronically submitted to *typeapproval@uscg.mil*.

(e) Upon evaluation of the submittal package and approval by the Commandant, a Coast Guard Certificate of Approval will be issued valid for 5 years so long as the follow-up program for the portable foam applicators is maintained.

(f) Upon application, a Certificate of Approval for a portable foam applicator may be renewed for successive 5-year periods without further testing so long as no changes have been made to the products, the follow-up program has been maintained, and no substitutions of or changes to the standards listed in § 162.027–2 have been made.

PART 164—MATERIALS

■ 215. The authority citation for part 164 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; and Department of Homeland Security Delegation No. 0170.1.

■ 216. Add § 164.006–6 to read as follows:

§ 164.006–6 Alternative materials.

Products approved under approval series 164.106 may be used where products approved under this subpart are required.

■ 217. Add § 164.007–10 to read as follows:

§ 164.007–10 Alternative materials.

Products approved under approval series 164.107 may be used where products approved under this subpart are required.

■ 218. Add § 164.008–8 to read as follows:

§ 164.008–8 Alternative materials.

Products approved under approval series 164.108 may be used where products approved under this subpart are required.

■ 219. Add § 164.009–26 to read as follows:

§ 164.009–26 Alternative materials.

Products approved under approval series 164.109 may be used where products approved under this subpart are required.

■ 220. Add § 164.012–16 to read as follows:

§ 164.012–16 Alternative materials.

Products approved under approval series 164.112 may be used where products approved under this subpart are required.

■ 221. Add subpart 164.105 to read as follows:

Subpart 164.105—Deck Assemblies (A–60) For SOLAS Vessels

Sec.
164.105–1 Scope.
164.105–2 Incorporation by reference.
164.105–3 Testing, marking, and inspection requirements.
164.105–4 Approval procedures.

Subpart 164.105—Deck Assemblies (A–60) For SOLAS Vessels

§ 164.105–1 Scope.

This subpart prescribes requirements for approval of deck assemblies (A–60) for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.105–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org*.

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (“FTP Code”), IBR approved for § 164.105–3(a).

(2) [Reserved]

§ 164.105–3 Testing, marking, and inspection requirements.

(a) Each deck assembly submitted for type approval must be tested for non-combustibility under Annex 1, Part 1 and then tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.105–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a deck assembly.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.105–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 222. Add subpart 164.106 to read as follows:

Subpart 164.106—Primary Deck Coverings for SOLAS Vessels

Sec.
164.106–1 Scope.
164.106–2 Incorporation by reference.
164.106–3 Testing, marking, and inspection requirements.
164.106–4 Approval procedures.

Subpart 164.106—Primary Deck Coverings for SOLAS Vessels

§ 164.106–1 Scope

This subpart prescribes requirements for approval of primary deck coverings for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.106–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.106–3(a).

(2) [Reserved]

§ 164.106–3 Testing, marking, and inspection requirements.

(a) Each primary deck covering submitted for type approval must be tested in accordance with the flame spread procedures specified in Part 6 of Annex 1 and the smoke density and toxicity criteria in Part 2 of Annex 1 of the FTP Code (incorporated by reference, see § 164.106–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a primary deck covering.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.106–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil*. The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 223. Add subpart 164.107 to read as follows:

Subpart 164.107—Structural Insulation (A–60) for SOLAS Vessels

Sec.
164.107–1 Scope.
164.107–2 Incorporation by reference.
164.107–3 Testing, marking, and inspection requirements.
164.107–4 Approval procedures.

Subpart 164.107—Structural Insulation (A–60) for SOLAS Vessels

§ 164.107–1 Scope.

This subpart prescribes requirements for approval of structural insulation (A–60) for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS). Products approved under these requirements may be used in place of products required to be approved as meeting the requirements of § 164.007.

§ 164.107–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org*.

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (“FTP Code”), IBR approved for § 164.107–3(a).

(2) [Reserved]

§ 164.107–3 Testing, marking, and inspection requirements.

(a) Each structural insulation (A–60) submitted for type approval must be tested in accordance with the non-combustibility test under Annex 1, Part 1 and then tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.107–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx*.

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a structural insulation.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.107–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product’s suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil*. The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 224. Add subpart 164.108 to read as follows:

Subpart 164.108—Bulkheads (B–0 and B–15) for SOLAS Vessels

Sec.
164.108–1 Scope.
164.108–2 Incorporation by reference.
164.108–3 Testing, marking, and inspection requirements.
164.108–4 Approval procedures.

Subpart 164.108—Bulkheads (B–0 and B–15) for SOLAS Vessels

§ 164.108–1 Scope.

This subpart prescribes requirements for approval of bulkheads (B–0 and B–15) for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS). Products approved under these requirements may be used in place of products required to be approved as meeting the requirements of § 164.008.

§ 164.108–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org*.

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.108–3(a).

(2) [Reserved]

§ 164.108–3 Testing, marking, and inspection requirements.

(a) Each bulkhead (B–0 & B–15) submitted for type approval must be tested in accordance with non-combustibility under Annex 1, Part 1 and then tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.108–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx*.

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a bulkhead.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.108–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4) United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil*. The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 225. Add subpart 164.109 to read as follows:

Subpart 164.109—Non-combustible Materials (SOLAS)

Sec.
164.109–1 Scope.
164.109–2 Incorporation by reference.
164.109–3 Testing, marking, and inspection requirements.
164.109–4 Approval procedures.

Subpart 164.109—Non-combustible Materials (SOLAS)

§ 164.109–1 Scope.

This subpart prescribes requirements for approval of non-combustible materials for use on SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS). Products approved under these requirements may be used in place of products required to be approved as meeting the requirements of § 164.009.

§ 164.109–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org*.

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.109–3(a).

(2) [Reserved]

§ 164.109–3 Testing, marking, and inspection requirements.

(a) Non-combustible materials submitted for type approval must be tested in accordance with Annex 1, Part 1 of the FTP Code (incorporated by reference, see § 164.109–2). Five specimens must be tested and the test need not last longer than 30 minutes.

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx*.

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a non-combustible material.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.109–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 226. Add subpart 164.110 to read as follows:

Subpart 164.110—Continuous Ceilings (B–0 and B–15) (SOLAS)

Sec.
164.110–1 Scope.
164.110–2 Incorporation by reference.
164.110–3 Testing, marking, and inspection requirements.
164.110–4 Approval procedures.

Subpart 164.110—Continuous Ceilings (B–0 and B–15) (SOLAS)

§ 164.110–1 Scope.

This subpart prescribes requirements for approval of continuous ceilings (B–0 and B–15) for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.110–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.110–3(a).

(2) [Reserved]

§ 164.110–3 Testing, marking, and inspection requirements.

(a) Continuous Ceilings (B–0 and B–15) (SOLAS) submitted for type approval must be tested for non-combustibility under Annex 1, Part 1, and then tested for fire resistance under Annex 1, Part 3, Appendix 2, of the FTP Code (incorporated by reference, see § 164.110–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a continuous ceiling.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.110–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 227. Add subpart 164.111 to read as follows:

Subpart 164.111—Draperies, Curtains, and Other Suspended Textiles

Sec.
164.111–1 Scope.
164.111–2 Incorporation by reference.
164.111–3 Testing, marking, and inspection requirements.
164.111–4 Approval procedures.

Subpart 164.111—Draperies, Curtains, and Other Suspended Textiles

§ 164.111–1 Scope.

This subpart prescribes requirements for approval of draperies, curtains, and other suspended textiles as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.111–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering

Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.111–3(a).

(2) [Reserved]

§ 164.111–3 Testing, marking, and inspection requirements.

(a) Draperies, curtains, and other suspended textiles submitted for type approval must be tested for qualities of resistance to the propagation of flame not inferior to those of wool of mass 0.8 kg/m^2 under Annex 1, Part 7, of the FTP Code (incorporated by reference, see § 164.111–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as draperies, curtains and other suspended textiles.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.111–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 228. Add subpart 164.112 to read as follows:

Subpart 164.112—Interior Finish (Bulkheads and Ceiling Finishes) (SOLAS)

Sec.

164.112–1 Scope.
164.112–2 Incorporation by reference.
164.112–3 Testing, marking, and inspection requirements.
164.112–4 Approval procedures.

Subpart 164.112—Interior Finish (Bulkheads and Ceiling Finishes) (SOLAS)

§ 164.112–1 Scope.

This subpart prescribes requirements for approval of interior finishes (bulkheads and ceiling finishes) for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS). Products approved under these requirements may be used in place of products required to be approved as meeting the requirements of § 164.012.

§ 164.112–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.112–3(a).

(2) [Reserved]

§ 164.112–3 Testing, marking, and inspection requirements.

(a) Interior Finishes (Bulkheads and ceiling finishes) for SOLAS vessels submitted for type approval must be tested for surface flammability in Annex 1, Part 5, and the smoke density and toxicity criteria of Annex 1, Part 2, of the FTP Code (incorporated by reference, see § 164.112–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as an interior finish.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.112–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 229. Add subpart 164.117 to read as follows:

Subpart 164.117—Floor Finish (SOLAS)

Sec.
164.117–1 Scope.
164.117–2 Incorporation by reference.
164.117–3 Testing, marking, and inspection requirements.
164.117–4 Approval procedures.

Subpart 164.117—Floor Finish (SOLAS)

§ 164.117–1 Scope.

This subpart prescribes requirements for approval of floor finishes for SOLAS vessels as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.117–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.117–3(a).

(2) [Reserved]

§ 164.117–3 Testing, marking, and inspection requirements.

(a) Floor finishes for SOLAS vessels submitted for type approval must be tested for surface flammability in Annex 1, Part 5, and the smoke density and toxicity criteria of Annex 1, Part 2, of the FTP Code (incorporated by reference, see § 164.117–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a floor finish.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.117–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 230. Add subpart 164.136 to read as follows:

Subpart 164.136—Fire Doors

Sec.
164.136–1 Scope.
164.136–2 Incorporation by reference.
164.136–3 Testing, marking, and inspection requirements.
164.136–4 Approval procedures.

Subpart 164.136—Fire Doors

§ 164.136–1 Scope.

This subpart prescribes requirements for approval of fire doors as required by the International Convention for the Safety of Life at Sea (SOLAS). Products approved under these requirements may be used where fire doors of the same class are required in domestic vessels.

§ 164.136–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.136–3(a).

(2) [Reserved]

§ 164.136–3 Testing, marking, and inspection requirements.

(a) Fire doors submitted for type approval must be tested for non-combustibility under Annex 1, Part 5, and then tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.136–2). Adhesives used in the construction of fire doors need not be non-combustible, but they must be tested for low flame spread characteristics under Annex 1, Part 5 of the FTP Code and should be included in the approved door's follow-up program.

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire door.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.136–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 231. Add subpart 164.137 to read as follows:

Subpart 164.137—Windows

Sec.
164.137–1 Scope.
164.137–2 Incorporation by reference.
164.137–3 Testing, marking, and inspection requirements.
164.137–4 Approval procedures.

Subpart 164.137—Windows

§ 164.137–1 Scope.

This subpart prescribes requirements for approval of windows as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.137–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.137–3(a).

(2) Resolution A.754(18), Recommendation on Fire Resistance Tests for ''A'', ''B'' and ''F'' Class Divisions, adopted 4 November 1993 (''IMO Resolution A.754(18)''), IBR approved for § 164.137–3(a).

§ 164.137–3 Testing, marking, and inspection requirements.

(a) Windows submitted for type approval must be tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.137–2). Windows must also meet the thermal radiation test supplement to fire resistance, as outlined in Appendix 1 of Part 3 of the FTP Code, and the hose stream test of paragraph 5 of Appendix A.1 of IMO Resolution A.754(18) (incorporated by reference, see § 164.137–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a window.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.137–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 232. Add subpart 164.138 to read as follows:

Subpart 164.138—Fire Stops (Penetration Seals)

Sec.
164.138–1 Scope.
164.138–2 Incorporation by reference.
164.138–3 Testing, marking, and inspection requirements.
164.138–4 Approval procedures.

Subpart 164.138—Fire Stops (Penetration Seals)

§ 164.138–1 Scope.

This subpart prescribes requirements for approval of fire stops (penetration seals) as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.138–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition (''FTP Code''), IBR approved for § 164.138–3(a).

(2) Resolution A.754(18), Recommendation on Fire Resistance Tests for ''A'', ''B'' and ''F'' Class Divisions, adopted 4 November 1993 (''IMO Resolution A. 754(18)''), IBR approved for § 164.138–3(a).

§ 164.138–3 Testing, marking, and inspection requirements.

(a) Fire stops (penetration seals) submitted for type approval must be tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.138–2). Such devices must also be tested in accordance with Appendices A.III and A.IV of IMO Resolution A.754(18) (incorporated by reference, see § 164.138–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire stop.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.138–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 233. Add subpart 164.139 to read as follows:

Subpart 164.139—Dampers

Sec.

164.139–1 Scope.
164.139–2 Incorporation by reference.
164.139–3 Testing, marking, and inspection requirements.
164.139–4 Approval procedures.

Subpart 164.139–Dampers

§ 164.139–1 Scope.

This subpart prescribes requirements for approval of fire dampers as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.139–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for the Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.139–3(a).

(2) Resolution A.754(18), Recommendation on Fire Resistance Tests for "A", "B" and "F" Class Divisions, adopted 4 November 1993 ("IMO Resolution A.754(18)"), IBR approved for § 164.139–3(a).

§ 164.139–3 Testing, marking, and inspection requirements.

(a) Automatic fire dampers that are installed in A-class divisions that are submitted for type approval must be tested for fire resistance under Annex 1, Part 3 of the FTP Code (incorporated by reference, see § 164.139–2). Such devices must also be tested in accordance with Appendix A–II of IMO Resolution A.754(18) (incorporated by reference, see § 164.139–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire damper.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and shall furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

164.139–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 234. Add subpart 164.141 to read as follows:

Subpart 164.141—Plastic Pipes

Sec.

164.141–1 Scope.
164.141–2 Incorporation by reference.
164.141–3 Testing, marking, and inspection requirements.
164.141–4 Approval procedures.

Subpart 164.141—Plastic Pipes

§ 164.141–1 Scope.

This subpart prescribes requirements for approval of plastic piping systems. Plastic piping systems include the pipe, fittings, system joints, method of joining, and any internal or external liners, coverings, and coatings required to comply with the performance criteria of this subpart.

§ 164.141–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.141–3(c).

(2) Resolution A.653(16), Recommendation on Improved Fire Test Procedures for Surface Flammability of Bulkhead, Ceiling and Deck Finish Materials, adopted on 19 October 1989

("IMO Resolution A.653(16)"), IBR approved for § 164.141–3(a).

(3) Resolution A.753(18), Guidelines for the Application of Plastic Pipe on Ships, adopted on 4 November 1993 ("IMO ResolutionA.753(18)"), IBR approved for § 164.141–3(a) and (b).

(4) Resolution MSC.313(88), Amendments to the Guidelines for the Application of Plastic Pipes on Ships, ("IMO Resolution MSC.313(88)"), adopted 26 November 2010, IBR approved for § 164.141–3(a) and (b).

§ 164.141–3 Testing, marking, and inspection requirements.

(a) All plastic piping submitted for approval must meet the flame spread requirements of IMO Resolution A.653(16) as modified for pipes by IMO Resolution A.753(18) and IMO Resolution MSC.313(88) (all incorporated by reference, see § 164.141–2) except that:

(1) The test specimens need not be wrapped in aluminum foil; and

(2) Testing need not be conducted on every pipe size. Testing may be conducted on piping sizes with the maximum and minimum wall thickness intended to be approved. This will qualify all piping sizes within the tested range.

(b) In order to receive approval for fire endurance, pipe must be tested as indicated in IMO Resolution A.753(18) and IMO Resolution MSC.313(88). When satisfying the requirements for L1 or L2 service, the pipe will be approved for use in lesser service grades. The approval of piping systems of sizes different than those tested will be allowed as provided for in Table 164.141(a) of this subpart.

TABLE 164.141(a)—APPROVAL OF PIPING SYSTEMS OF SIZES DIFFERENT THAN TESTED

Size * tested, inches	Minimum size * approved	Maximum size * approved, inches
0 to ≤2	Size Tested	Size Tested.
>2 to ≤6	Size Tested	≤6.
>6 to ≤12	Size Tested	≤12.
>12 to ≤24	Size Tested	≤24.
>24 to ≤36	Size Tested	≤36.
>36 to ≤48	Size Tested	≤48.

* Nominal outside diameter

(c) To be approved for smoke and toxicity requirements, piping systems must meet the requirements of Annex 1, Part 2 of the FTP Code (incorporated by reference, see § 164.141–2) with the following modifications:

(1) Plastic piping meeting paragraph 2.2 of Annex 2 of the FTP Code as having very low flame spread when tested to Part 5 are deemed to meet the smoke and toxicity requirements without testing to Part 2.

(2) Testing need only be conducted on piping sizes with the maximum and minimum wall thicknesses intended to be approved.

(3) The test sample should be fabricated by cutting pipes lengthwise into individual sections and then assembling the sections into a test sample as representative as possible of a flat surface. All cuts should be made normal to the pipe wall.

(4) The number of sections that must be assembled together to form a square test sample with sides measuring 3 inches, should be that which corresponds to the nearest integral number of sections which will result in a test sample with an equivalent linearized surface width between 3 and 3 ½ inches. The surface width is defined as the measured sum of the outer circumference of the assembled pipe sections normal to the lengthwise sections.

(5) The test samples should be mounted on calcium silicate board and held in place by the edges of the test frame and, if necessary, by wire. There should be no gaps between individual sections and the samples should be constructed so that the edges of two adjacent sections coincide with the centerline of the test holder.

(6) The space between the concave unexposed surface of the test sample and the surface of the calcium silicate backing should be left void.

(7) The void space between the top of the exposed test surface and the bottom edge of the sample holder frame should be filled with a high temperature insulating wool where the pipe extends under the frame.

(8) When the pipes are to include fireproofing or coatings, the composite structure consisting of the segmented pipe wall and fireproofing shall be tested and the thickness of the fireproofing should be the minimum thickness specified for the intended usage.

(9) Test samples should be oriented in the apparatus such that the pilot burner flame will be normal to the lengthwise piping sections.

(d) Where required to be approved, piping systems must comply with the non-metallic materials requirements in 46 CFR 56.60–25(a)(1).

(e) All testing and inspections required by this subpart, except as allowed by paragraph (b) of this section, must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx*.

(f) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(g) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as plastic piping.

(h) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(i) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.141–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 235. Add subpart 164.142 to read as follows:

Subpart 164.142—Bedding Components

Sec.
164.142–1 Scope.
164.142–2 Incorporation by reference.
164.142–3 Testing, marking, and inspection requirements.
164.142–4 Approval procedures.

Subpart 164.142—Bedding Components

§ 164.142–1 Scope.

This subpart prescribes requirements for approval of bedding components as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.142–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.142–3(a).

(2) [Reserved]

§ 164.142–3 Testing, marking, and inspection requirements.

(a) Bedding components that are submitted for type approval must be tested for qualities of resistance to the ignition and propagation of flame of Annex 1, Part 9 of the FTP Code (incorporated by reference, see § 164.142–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a bedding component.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.142–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 236. Add subpart 164.144 to read as follows:

Subpart 164.144—Upholstered Furniture

Sec.
164.144–1 Scope.
164.144–2 Incorporation by reference.
164.144–3 Testing, marking, and inspection requirements.
164.144–4 Approval procedures.

Subpart 164.144—Upholstered Furniture

§ 164.144–1 Scope.

This subpart prescribes requirements for approval of upholstered furniture as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.144–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_*

register/code_of_federal_regulations/ibr_locations.html.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.144–3(a).

(2) [Reserved]

§ 164.144–3 Testing, marking, and inspection requirements.

(a) Upholstered furniture that is submitted for type approval must be tested for qualities of resistance to the ignition and propagation of flame of Annex 1, Part 8 of the FTP Code (incorporated by reference, see § 164.144–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as upholstered furniture.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.144–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 237. Add subpart 164.146 to read as follows:

Subpart 164.146—Fire Door Control System (SOLAS)

Sec.
164.146–1 Scope.
164.146–2 Incorporation by reference.
164.146–3 Testing, marking, and inspection requirements.
164.146–4 Approval procedures.

Subpart 164.146—Fire Door Control System (SOLAS)

§ 164.146–1 Scope.

This subpart prescribes requirements for approval of fire door control systems as required by the International Convention for the Safety of Life at Sea (SOLAS).

§ 164.146–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.146–3(a).

(2) [Reserved]

§ 164.146–3 Testing, marking, and inspection requirements.

(a) A fire door control system that is submitted for type approval must be tested in accordance with Annex 1, Part 4 of the FTP Code (incorporated by reference, see § 164.146–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire door control system.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.146–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 238. Add subpart 164.201 to read as follows:

Subpart 164.201—Fire-resisting Materials for High-speed Craft

Sec.
164.201–1 Scope.
164.201–2 Incorporation by reference.
164.201–3 Testing, marking, and inspection requirements.
164.201–4 Approval procedures.

Subpart 164.201—Fire-resisting Materials for High-speed Craft

§ 164.201–1 Scope.

This subpart prescribes requirements for approval of fire-resisting materials for high-speed craft as required by the International Code of Safety for High Speed Craft (HSC Code).

§ 164.201–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.201–3(a).

(2) [Reserved]

§ 164.201–3 Testing, marking, and inspection requirements.

(a) Fire-resisting materials for high-speed craft that is submitted for type approval must be tested in accordance with Annex 1, Part 10 of the FTP Code (incorporated by reference, see § 164.201–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire resisting material for high speed craft.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire-testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.201–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil*. The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

■ 239. Add subpart 164.207 to read as follows:

Subpart 164.207—Fire-resisting Divisions for High-speed Craft

Sec.
164.207–1 Scope.
164.207–2 Incorporation by reference.
164.207–3 Testing, marking, and inspection requirements.
164.207–4 Approval procedures.

Subpart 164.207—Fire-resisting Divisions for High-speed Craft

§ 164.207–1 Scope.

This subpart prescribes requirements for approval of fire-resisting divisions for high-speed craft as required by the International Code of Safety for High-Speed Craft (HSC Code).

§ 164.207–2 Incorporation by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_*

register/code_of_federal_regulations/ibr_locations.html.

(b) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) 2010 FTP Code, International Code for Application of Fire Test Procedures, 2010 (Resolution MSC.307(88)), 2012 Edition ("FTP Code"), IBR approved for § 164.207–3(a).

(2) [Reserved]

§ 164.207–3 Testing, marking, and inspection requirements.

(a) Fire-resisting divisions for high-speed craft that are submitted for type approval must be tested in accordance with Annex 1, Part 11 of the FTP Code (incorporated by reference, see § 164.207–2).

(b) All testing and inspections required by this subpart must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent laboratories accepted as meeting subpart 159.010 of this chapter is available online at *http://psix.uscg.mil/EQLabs/Default.aspx.*

(c) The independent laboratory must perform an initial factory inspection to select the test specimens and establish the materials of construction, chemical make-up, dimensions, tolerances, and other related factors needed to confirm product consistency during follow-up production inspections.

(d) Production inspections must be performed by the independent laboratory in accordance with subpart 159.007 of this chapter at least annually to confirm that no changes have been made to the product that may adversely affect its fire performance as a fire resisting division for high speed craft.

(e) The independent laboratory must prepare production inspection procedures and a report of the results of the fire-testing program, and must furnish the manufacturer with three copies of each upon completion of the required testing.

(f) Materials approved under this subpart must be shipped in packaging that is clearly marked with the name of the manufacturer, product designation, date of manufacture, batch or lot number, and Coast Guard type approval number.

§ 164.207–4 Approval procedures.

(a) Manufacturers that desire type approval should submit a written notice to the Commandant (CG–ENG–4) describing the product and its intended uses. The Commandant will evaluate this information and notify the manufacturer of the product's suitability for testing. The manufacturer should then contract directly with an accepted independent laboratory to perform the required tests and inspections.

(b) Upon completion of the required testing and inspections, the manufacturer must submit either a written request for type approval to the Commandant (CG–ENG–4), United States Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, or electronically submit a request to *typeapproval@uscg.mil.* The request must indicate the name and address of the manufacturer, all product designations, and the address of all manufacturing facilities. The request must include a copy of the final fire test report and the production inspection procedures. From the information submitted, the Commandant determines whether or not the product is acceptable for type approval. If the product is determined to be acceptable, a type approval certificate valid for a 5-year period will be issued. If the product is not accepted, the manufacturer will be notified of the reasons why.

Subpart 164.900 [Removed]

■ 240. Remove subpart 164.900.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

■ 241. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 242. In § 167.01–5, add a sentence to the end of paragraph (a) to read as follows:

§ 167.01–5 Applicability; preemptive effect.

(a) * * * The regulations in this subchapter have preemptive effect over State or local regulations in the same field.

* * * * *

■ 243. In § 167.45–30 —

■ a. Redesignate the existing text as paragraph (a); and

■ b. Add paragraph (b) to read as follows:

§ 167.45–30 Use of approved fire fighting equipment.

* * * * *

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that:

(1) Components are listed by an independent, nationally recognized testing laboratory as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

PART 169—SAILING SCHOOL VESSELS

■ 244. The authority citation for part 169 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1; § 169.117 also issued under the authority of 44 U.S.C. 3507.

■ 245. Revise § 169.115 to read as follows:

§ 169.115 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue, SE. Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Boat and Yacht Council (ABYC), 613 Third St, Suite 10, Annapolis, MD 21403, 410–990–4460, *http://www.abycinc.org.*

(1) A–1–78, Marine LPG—Liquefied Petroleum Gas Systems, IBR approved for § 169.703(c).

(2) A–3–70, Recommended Practices and Standards Covering Galley Stoves, IBR approved for § 169.703(a).

(3) A–22–78, Marine CNG—Compressed Natural Gas Systems, IBR approved for § 169.703(c).

(4) H–2.5, Ventilation of Boats Using Gasoline—Design and Construction, 1981, IBR approved for § 169.629.

(5) H–24.9 (g) and (h)—"Fuel Strainers and Fuel Filters" (1975), IBR approved for § 169.629.

(6) P–1–73, Safe Installation of Exhaust Systems for Propulsion and

Auxiliary Engines, 1973, IBR approved for § 169.609.

(c) DLA Document Services, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111, *http://quicksearch.dla.mil.*

(1) Federal Specification ZZ–H–451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, F, IBR approved for § 169.563(c).

(2) [Reserved]

(d) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 169.247(a).

(2) NFPA 70, National Electrical Code, Article 310–8 and Table 310–13, 1980, IBR approved for § 169.672(a).

(3) NFPA 302, Pleasure and Commercial Motor Craft, Chapter 6, 1980, IBR approved for § 169.703(c).

(4) NFPA 306, Control of Gas Hazards on Vessels, 1980, IBR approved for § 169.236(a).

(e) NIST, 100 Bureau Drive, Stop 1070, Gaithersburg, MD 20899, 301–975–6478, *http://nist.gov.*

(1) Special Pub. 440 (SD Cat. No. C13.10:490), "Color: Universal Language and Dictionary of Names", 1976.

(2) [Reserved]

(f) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 19, Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001, IBR approved for § 169.563(c).

(2) [Reserved]

§ 169.236 [Amended]

■ 246. In § 169.236(a), after the words "The provisions of NFPA 306", remove the words ", "Control of Gas Hazards on Vessels,"" and add, in their place, the words "(incorporated by reference, see § 169.115)".

■ 247. Revise § 169.247 to read as follows:

§ 169.247 Fire fighting equipment.

(a) At each inspection for certification and periodic inspection and at such other times as considered necessary, all fire extinguishing equipment must be inspected to ensure it is in suitable condition. Tests may be necessary to determine the condition of the equipment. The inspector must verify that the following tests and inspections have been conducted by a qualified servicing facility at least once every 12 months:

(1) Portable fire extinguishers and semi-portable fire extinguishing systems must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 169.115) as amended here:

(i) Certification or licensing as fire extinguisher servicing agency by a state or local authority having jurisdiction will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(ii) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iii) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iv) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(2) All parts of the fixed fire extinguishing systems must be examined for excessive corrosion and general condition. Table 169.247(a)(1) of this section provides detailed inspection and test requirements of fixed systems.

(3) Piping, controls, valves, and alarms on all fire extinguishing systems must be checked to be certain the system is in operating condition.

(4) The fire main system is operated and the pressure checked at the most remote and highest outlets.

(5) Each firehose is subjected to a test pressure equivalent to its maximum service pressure.

(b) [Reserved]

TABLE 169.247(a)(1)—FIXED SYSTEMS

Type of system	Test
Carbon dioxide or HALON 1301	Weigh cylinders. Recharge if weight loss exceeds 10 percent of weight of the charge.

■ 248. In § 169.563, revise paragraph (c) to read as follows:

§ 169.563 Firehose.

* * * * *

(c) Vessels of 90 feet or more must have lined commercial firehose that conforms to UL 19 or Federal Specification ZZ–H–451(incorporated by reference, see § 169.115). The firehose must be fitted with a combination nozzle approved under § 162.027 of this chapter.

* * * * *

■ 249. Amend § 169.567 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (a) and (b); and

■ c. Remove paragraph (g).

The revisions read as follows:

§ 169.567 Portable fire extinguishers.

(a) The minimum number of portable fire extinguishers required on each vessel is determined by the Officer in Charge, Marine Inspection, in accordance with Table 169.567(a) of this section and other provisions of this subpart.

TABLE 169.567(a)—REQUIRED PORTABLE FIRE EXTINGUISHERS

Space	Portable fire extinguishers	
	Minimum required rating	Quantity and location
Propulsion machinery space without fixed extinguishing system.	40–B:C	2.
Propulsion machinery space with fixed extinguishing system	40–B:C	1 in the vicinity of the exit.
Living space and open boats	2–A	1 per 1,000 cubic foot of space.
Galley (without fixed system)	40–B:C	1 per 500 cubic foot.
Spare Units	2–A	10 percent of the required number rounded up.
	40–B:C	1.

(b) Table 169.567(a) of this section indicates the minimum required classification for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

* * * * *

PART 175—GENERAL PROVISIONS

■ 250. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; § 175.900 also issued under 44 U.S.C. 3507.

■ 251. In § 175.100, add a sentence to the end of the section to read as follows:

§ 175.100 Purpose.

* * * * *

The regulations in this subchapter have preemptive effect over State or local regulations in the same field.

■ 252. In § 175.400. add the definitions of "Ignition source" and "Isolated space", in alphabetical order, and revise the definition of "Open to the atmosphere" to read as follows:

§ 175.400 Definitions of terms used in the subchapter.

* * * * *

Ignition source means an internal combustion engine regardless of horsepower or continuously running electrical motors without overload protection or other run-limiting devices. Properly installed electrical wire or cabling with associated connections and outlets must not be considered an ignition source.

* * * * *

Isolated space means a closed, water-tight space infrequently accessed by the crew while the vessel is in operation. Examples of these spaces are the fore-peak spaces, lazerettes, and spaces with unattended continuously running electrical motors. Small, non-water-tight compartments visible to the crew and passengers such as storage lockers under the operating station or passenger seating areas, are not considered isolated spaces.

* * * * *

Open to the atmosphere means a compartment that has at least 0.342 square meters of open area directly exposed to the atmosphere for each cubic meter (15 square inches for each cubic foot) of net compartment volume.

* * * * *

■ 253. Revise § 175.600 to read as follows:

§ 175.600 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) American Boat and Yacht Council (ABYC), 613 Third St., Suite 10, Annapolis, MD 21403, 410–990–4460, *http://www.abycinc.org.*

(1) A–1–93, Marine Liquefied Petroleum Gas (LPG) Systems ("ABYC A–1"), IBR approved for § 184.240(a), (c), (d), and (g).

(2) A–3–93, Galley Stoves ("ABYC A–3"), IBR approved for § 184.200.

(3) A–7–70, Boat Heating Systems ("ABYC A–7"), IBR approved for § 184.200.

(4) A–16–89, Electric Navigation Lights ("ABYC A–16"), IBR approved for § 183.130(a).

(5) A–22–93, Marine Compressed Natural Gas (CNG) Systems ("ABYC A–22"), IBR approved for § 184.240(b) through (e).

(6) E–8, Alternating Current (AC) Electrical Systems on Boats, July 2001 ("ABYC E–8"), IBR approved for §§ 183.130(a) and 183.340(b).

(7) E–9, Direct Current (DC) Electrical Systems on Boats (May 28, 1990) ("ABYC E–9"), IBR approved for §§ 183.130(a) and 183.340(b).

(8) H–2–89, Ventilation of Boats Using Gasoline ("ABYC H–2"), IBR approved for §§ 182.130 and 182.460(m).

(9) H–22–86, DC Electric Bilge Pumps Operating Under 50 Volts ("ABYC H–22"), IBR approved for §§ 182.130 and 182.500(b).

(10) H–24–93, Gasoline Fuel Systems ("ABYC H–24"), IBR approved for §§ 182.130, 182.440(d), 182.445, 182.450(f) and 182.455(c).

(11) H–25–94, Portable Gasoline Fuel Systems for Flammable Liquids ("ABYC H–25"), IBR approved for §§ 182.130 and 182.458(b).

(12) H–32–87, Ventilation of Boats Using Diesel Fuel ("ABYC H–32"), IBR approved for §§ 182.130, 182.465(i) and 182.470(c).

(13) H–33–89, Diesel Fuel Systems ("ABYC H–33"), IBR approved for §§ 182.130, 182.440(d), 182.445(f), 182.450(f) and 182.455(c).

(14) P–1–93, Installation of Exhaust Systems for Propulsion and Auxiliary Engines ("ABYC P–1"), IBR approved for §§ 177.405(b), 177.410(c), 182.130, 182.425(c), and 182.430(k).

(15) P–4–89, Marine Inboard Engines ("ABYC P–4"), IBR approved for §§ 182.130 and 182.420(b) and (d).

(c) American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, 281–877–5800, *http://ww2.eagle.org.*

(1) Guide for High Speed Craft, 1997 ("ABS High Speed Craft"), IBR approved for § 177.300(c) and (d).

(2) Rules for Building and Classing Aluminum Vessels, 1975 ("ABS Aluminum Vessel Rules"), IBR approved for § 177.300(d).

(3) Rules for Building and Classing Reinforced Plastic Vessels, 1978 ("ABS Plastic Vessel Rules"), IBR approved for § 177.300(c).

(4) Rules for Building and Classing Steel Vessels, 1995 (''ABS Steel Vessel Rules''), IBR approved for § 183.360(b).

(5) Rules for Building and Classing Steel Vessels Under 61 Meters (200 feet) in Length, 1983 (''ABS Steel Vessel Rules (≤61 Meters)''), IBR approved for § 177.300.

(6) Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1995 (''ABS Steel Vessel Rules (Rivers/Intracoastal)''), IBR approved for § 177.300(e).

(d) American National Standards Institute (ANSI), 25 West 43rd St., New York, NY 10036, 212–642–4900, *http://www.ansi.org.*

(1) A 17.1–1984, including supplements A 17.1a and B–1985, Safety Code for Elevators and Escalators (''ANSI A 17.1''), IBR approved for § 183.540.

(2) B 31.1–1986, Code for Pressure Piping, Power Piping (''ANSI B 31.1.''), IBR approved for § 182.710(c).

(3) Motor Vehicles Operating on Land Highways (''ANSI Z 26.1''), IBR approved for § 177.1030(b).

(e) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428, 877–909–2786, *http://www.astm.org.*

(1) ASTM B 96–93, Standard Specification for Copper-Silicon Alloy Plate, Sheet, Strip, and Rolled Bar for General Purposes and Pressure Vessels (''ASTM B 96''), IBR approved for § 182.440(a).

(2) ASTM B 117–97, Standard Practice for Operating Salt Spray (Fog) Apparatus (''ASTM B 117''), IBR approved for § 175.400.

(3) ASTM B 122/B 122M–95, Standard Specification for Copper-Nickel-Tin Alloy, Copper-Nickel-Zinc Alloy (Nickel Silver), and Copper-Nickel Alloy Plate, Sheet, Strip and Rolled Bar (''ASTM B 122''), IBR approved for § 182.440(a).

(4) ASTM B 127–98, Standard Specification for Nickel-Copper Alloy (UNS NO4400) Plate, Sheet, and Strip (''ASTM B 127''), IBR approved for § 182.440(a).

(5) ASTM B 152–97a, Standard Specification for Copper Sheet, Strip, Plate, and Rolled Bar (''ASTM B 152''), IBR approved for § 182.440(a).

(6) ASTM B 209–96, Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate (''ASTM B 209''), IBR approved for § 182.440(a).

(7) ASTM D 93–97, Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester (''ASTM D 93''), IBR approved for § 175.400.

(8) ASTM D 635–97, Standard Test Method for Rate of Burning and or Extent and Time of Burning of Self-Supporting Plastics in a Horizontal Position (''ASTM D 635''), IBR approved for § 182.440(a).

(9) ASTM D 2863–95, Standard Method for Measuring the Minimum Oxygen Concentration to Support Candle-Like Combustion of Plastics (Oxygen Index) (''ASTM D 2863''), IBR approved for § 182.440(a).

(10) ASTM E 84–98, Standard Test Method for Surface Burning Characteristics of Building Materials (''ASTM E 84''), IBR approved for § 177.410(a) and (b).

(f) DLA Document Services, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111, *http://quicksearch.dla.mil.*

(1) Military Specification MIL–P–21929C, Plastic Material, Cellular Polyurethane, Foam-in-Place, Rigid (2 and 4 pounds per cubic foot), 1991 (''NPFC MIL–P–21929C''), IBR approved for § 179.240(b).

(2) Military Specification MIL–R–21607E(SH), Resins, Polyester, Low Pressure Laminating, Fire Retardant (''NPFC MIL–R–21607E(SH)''), 1990 IBR approved for § 177.410.

(g) Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854, 800–678–4333, *http://www.ieee.org.*

(1) Standard 45–1977, Recommended Practice for Electrical Installations on Shipboard (''IEEE 45–1977''), IBR approved for § 183.340(o).

(2) [Reserved]

(h) International Maritime Organization (IMO) Publishing, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, *http://www.imo.org.*

(1) Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances and Arrangements, dated 17 November 1983 (''IMO Resolution A.520(13)''), IBR approved for § 175.540(c).

(2) Resolution A.658(16), Use and Fitting of Retro-Reflective Materials on Life-Saving Appliances, dated 20 November 1989 (''IMO Resolution A. 658(16)''), IBR approved for § 185.604(h) and (i).

(3) Resolution A.688(17), Fire Test Procedures For Ignitability of Bedding Components (''IMO Resolution A. 688(17)''), dated 6 November 1991, IBR approved for § 177.405(g).

(4) Resolution A.760(18), Symbols Related to Life-Saving Appliances and Arrangements (''IMO Resolution A.760(18)''), dated 17 November 1993, IBR approved for § 185.604(f).

(5) International Convention for the Safety of Life at Sea (SOLAS), as amended, Consolidated Edition, 2009, including Erratum, IBR approved for § 177.420.

(i) International Organization for Standardization (ISO), Case postale 56, CH–1211 Geneva 20, Switzerland, +41 22 749 01 11, *http://www.iso.org.*

(1) ISO 8846, Small Craft-Electrical Devices-Protection Against Ignition of Surrounding Flammable Gases, December 1990 (''ISO 8846''), IBR approved for § 182.500(b).

(2) ISO 8849, Small Craft-Electrically Operated Bilge Pumps, December 15, 1990 (''ISO 8849''), IBR approved for § 182.500(b).

(j) Lloyd's Register of Shipping, 71 Fenchurch Street, London EC3M 4BS, +44 (0)20 7709 9166, *http://www.lr.org.*

(1) Rules and Regulations for the Classification of Yachts and Small Craft, as amended through 1983 (''Lloyd's Yachts and Small Craft''), IBR approved for § 177.300(a).

(2) [Reserved]

(k) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 176.810(b).

(2) NFPA 17–1994, Dry Chemical Extinguishing Systems, 1994 Edition, IBR approved for § 181.425(b).

(3) NFPA 17A–1994, Wet Chemical Extinguishing Systems, 1994 Edition, IBR approved for § 181.425(b).

(4) NFPA 70–1996, National Electrical Code (NEC), 1996 Edition, IBR approved for §§ 183.320(d) and (e), 183.340(d) and (o), and 183.372(c).

(5) NFPA 302–1994, Pleasure and Commercial Motor Craft, Chapter 6, 1994 Edition, IBR approved for §§ 184.200 and 184.240(a) through (c), (d) and (h).

(6) NFPA 306–1993, Control of Gas Hazards on Vessels, 1993 Edition, IBR approved for § 176.710(a).

(7) NFPA 1963–1989, Fire Hose Connections, 1989 Edition, IBR approved for § 181.320(b).

(l) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096, 724–776–4841, *http://www.sae.org.*

(1) SAE J–1475, Hydraulic Hose Fittings For Marine Applications, 1984 (''SAE J–1475''), IBR approved for § 182.720(e).

(2) SAE J–1928, Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989 (''SAE J–1928''), IBR approved for § 182.415(c).

(3) SAE J–1942, Hose and Hose Assemblies for Marine Applications, 1992 ("SAE J–1942"), IBR approved for § 182.720(e).

(m) UL (formerly Underwriters Laboratories), 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, NC 27709, 919–549–1400, *http://www.ul.com.*

(1) UL 19—Standard for Safety for Lined Fire Hose and Hose Assemblies, Twelfth Edition, approved November 30, 2001, IBR approved for § 181.320(b).

(2) UL 174–1989, as amended through June 23, 1994, Household Electric Storage Tank Heaters ("UL 174"), IBR approved for § 182.320(a).

(3) UL 217–1998, Single and Multiple Station Smoke Detectors ("UL 217"), IBR approved for § 181.450(a).

(4) UL 486A–1992, Wire Connectors and Soldering Lugs For Use With Copper Conductors ("UL 486A"), IBR approved for § 183.340(i).

(5) UL 489–1995, Molded-Case Circuit Breakers and Circuit Breaker Enclosures ("UL 489"), IBR approved for § 183.380(m).

(6) UL 595–1991, Marine Type Electric Lighting Fixtures ("UL 595"), IBR approved for § 183.410(d).

(7) UL 710–1990, as amended through September 16, 1993, Exhaust Hoods For Commercial Cooking Equipment ("UL 710"), IBR approved for § 181.425(a).

(8) UL 1058–1989, as amended through April 19, 1994, Halogenated Agent Extinguishing System Units ("UL 1058"), IBR approved for § 181.410(g).

(9) UL 1102–1992, Non integral Marine Fuel Tanks ("UL 1102"), IBR approved for § 182.440(a).

(10) UL 1110–1988, as amended through May 16, 1994, Marine Combustible Gas Indicators ("UL 1110"), IBR approved for § 182.480(a).

(11) UL 1111–1988, Marine Carburetor Flame Arresters ("UL 1111"), IBR approved for § 182.415(c).

(12) UL 1113, Electrically Operated Pumps for Nonflammable Liquids, Marine, Third Edition (Sep. 4, 1997) ("UL 1113"), IBR approved for § 182.520(e).

(13) UL 1453–1988, as amended through June 7, 1994, Electric Booster and Commercial Storage Tank Water Heaters ("UL 1453"), IBR approved for § 182.320(a).

(14) UL 1570–1995, Fluorescent Lighting Fixtures ("UL 1570"), IBR approved for § 183.410(d).

(15) UL 1571–1995, Incandescent Lighting Fixtures ("UL 1571"), IBR approved for § 183.410(d).

(16) UL 1572–1995, High Intensity Discharge Lighting Fixtures ("UL 1572"), IBR approved for § 183.410(d).

(17) UL 1573–1995, Stage and Studio Lighting Units ("UL 1573"), IBR approved for § 183.410(d).

(18) UL 1574–1995, Track Lighting Systems ("UL 1574"), IBR approved for § 183.410(d).

PART 176—INSPECTION AND CERTIFICATION

■ 254. The authority citation for part 176 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 255. Revise § 176.810 to read as follows:

§ 176.810 Fire protection.

(a) At each initial and subsequent inspection for certification, the owner or managing operator must be prepared to conduct tests and have the vessel ready for inspection of its fire protection equipment, including the following:

(1) Inspection of each portable fire extinguisher, semi-portable fire extinguisher, and fixed gas fire extinguishing system to check for excessive corrosion and general condition;

(2) Inspection of piping, controls, and valves, and the inspection and testing of alarms and ventilation shutdowns, for each fixed gas fire extinguishing system and detection system to determine that the system is in operating condition;

(3) Operation of the fire main system and checking of the pressure at the most remote and highest outlets;

(4) Testing of each firehose to a test pressure equivalent to its maximum service pressure;

(5) Checking of each cylinder containing compressed gas to ensure it has been tested and marked in accordance with 46 CFR 147.60;

(6) Testing or renewal of flexible connections and discharge hoses on semi-portable extinguishers and fixed gas extinguishing systems in accordance with 46 CFR 147.65; and

(7) Inspection and testing of all smoke and fire detection systems, including sensors and alarms.

(b) The owner, managing operator, or a qualified servicing facility as applicable must conduct the following inspections and tests:

(1) Portable and semi-portable extinguishers must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 175.600 of this chapter) as amended here:

(i) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(ii) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iii) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iv) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(2) For fixed-gas fire extinguishing systems, the inspections and tests required by Table 176.810(b) of this section, in addition to the tests required by 46 CFR 147.60 and 147.65. The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests.

TABLE 176.810(b)—FIXED FIRE EXTINGUISHING SYSTEMS

Type system	Test
Carbon dioxide	Weigh cylinders. Recharge if weight loss exceeds 10 percent of weight of charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Halon	Weigh cylinders. Recharge if weight loss exceeds 5 percent of weight of charge. If the system has a pressure gauge, also recharge if pressure loss (adjusted for temperature) exceeds 10 percent. Test time delays, alarms and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Dry Chemical (cartridge operated)	Examine pressure cartridge and replace if end is punctured or if determined to have leaked or to be in unsuitable condition. Inspect hose and nozzle to see if they are clear. Insert charged cartridge. Ensure extinguisher contains full charge.
Dry Chemical (stored pressure)	See that pressure gauge is in operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that pressure gauge, if so equipped, is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.
Clean Agents (Halon replacements)	Same as Halon.

(c) The owner, managing operator, or master must destroy, in the presence of the marine inspector, each firehose found to be defective and incapable of repair.

(d) At each initial and subsequent inspection for certification, the marine inspector may require that a fire drill be held under simulated emergency conditions to be specified by the inspector.

PART 177—CONSTRUCTION AND ARRANGEMENT

■ 256. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 257. Amend § 177.410 by revising paragraph (c)(3) to read as follows:

§ 177.410 Structural fire protection.

* * * * *

(c) * * *

(3) *Fire detection and extinguishing systems.* (i) Fire detection and extinguishing systems must be installed in compliance with §§ 181.400 through 181.420 of this subchapter.

(ii) All fiber reinforced plastic (FRP) vessels constructed with general purpose resins must be fitted with a smoke activated fire detection system of an approved type, installed in accordance with § 76.27 in subchapter H of this chapter, in—

(A) Accommodation spaces;

(B) Service spaces; and

(C) Isolated spaces that contain an ignition source as defined in § 175.400 of this chapter.

* * * * *

■ 258. Add § 177.420 to subpart D to read as follows:

§ 177.420 Vessels complying with SOLAS structural fire protection requirements.

Vessels meeting the structural fire protection requirements of SOLAS, Chapter II–2, Regulations 5, 6, 8, 9, and 11 (incorporated by reference, see § 175.600 of this chapter) may be considered equivalent to the provisions of this subpart.

PART 181—FIRE PROTECTION EQUIPMENT

■ 259. The authority citation for part 181 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 260. Revise § 181.120 to read as follows:

§ 181.120 Equipment installed but not required.

(a) Fire extinguishing equipment installed on a vessel in excess of the requirements of §§ 181.400 and 181.500 must be designed, constructed, installed, and maintained in accordance with a recognized industry standard acceptable to the Commandant (CG–ENG–4).

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed by an independent, nationally recognized testing laboratory as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I, subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

■ 261. In § 181.310—

■ a. In paragraphs (a) and (c), remove the words "fire hose" wherever they appear and add, in their place, the word "firehose".

■ b. Add paragraph (d) to read as follows:

§ 181.310 Fire main and hydrants.

* * * * *

(d) Spanner wrenches must be provided where a 40 millimeter (1.5 inch) diameter firehose is required by § 181.320(b). Existing vessels as of July 22, 2016 have 180 days to comply with this requirement.

Subpart D—Fixed Fire Extinguishing and Detection Systems

■ 262. Revise the heading for subpart D to read as set forth above.

■ 263. Amend § 181.400 as follows:

■ a. Revise the section heading;

■ b. In paragraph (b)(3), remove the text "B–II" and add, in its place, the text "40–B";

■ c. In paragraph (b)(5) introductory text, remove the word "semiportable" and add, in its place, the word "semi-portable";

■ d. In paragraphs (b)(5)(i), (b)(5)(ii), and (b)(5)(iii), remove the word "shall" and add, in its place, the word "must"; and

■ e. Remove paragraphs (c) through (g).

The revision reads as follows:

§ 181.400 Spaces required to have fixed fire extinguishing systems.

* * * * *

■ 264. Add § 181.405 to read as follows:

§ 181.405 Spaces required to have fire detection systems.

(a) The following spaces must be equipped with a fire detection and alarm system of an approved type installed in accordance with 46 CFR part 76, except when a fixed-gas fire extinguishing system that is capable of automatic discharge upon heat detection is installed or when the space is manned:

(1) A space containing propulsion machinery.

(2) A space containing an internal combustion engine of more than 50 hp.

(3) A space containing an oil-fired boiler.

(4) A space containing machinery powered by gasoline or any other fuels having a flash point of 43.3 °C (110 °F) or lower.

(5) A space containing a fuel tank for gasoline or any other fuel having a flash point of 43.3 °C (110 °F) or lower.

(b) All griddles, broilers, and deep fat fryers must be fitted with a grease extraction hood in compliance with § 181.425.

(c) Each overnight accommodation space on a vessel with overnight accommodations for passengers must be fitted with an independent modular smoke detection and alarm unit in compliance with § 181.450.

(d) An enclosed vehicle space must be fitted with an automatic sprinkler system that meets the requirements of 46 CFR part 76 and a fire detection and alarm system of an approved type that is installed in accordance with 46 CFR part 76.

(e) A partially enclosed vehicle space must be fitted with a manual sprinkler system that meets the requirements of 46 CFR part 76.

§ 181.410 [Amended]

■ 265. Amend § 181.410 as follows:

■ a. In paragraph (f)(5)(i), after the words "must be equal to the gross volume of the system", add the words "in cubic meters"; remove the number "160" and add, in its place, the number "0.624"; and remove the number "192" and add, in its place, the number "0.749"; and

■ b. In paragraph (f)(6)(i), remove the number "480" and add, in its place, the number "1.88".

■ 266. Revise § 181.500 to read as follows:

§ 181.500 Required number, type, and location.

(a) Each portable fire extinguisher on a vessel must be of an approved type. The minimum number of portable fire extinguishers required on a vessel must be acceptable to the cognizant Officer in Charge, Marine Inspection, but must not be fewer than the minimum number required by Table 181.500(b) and other provisions of this section.

(b) Table 181.500(b) of this section indicates the minimum required classification for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

TABLE 181.500(b)—REQUIRED PORTABLE FIRE EXTINGUISHERS

Space	Portable fire extinguishers	
	Minimum required rating	Quantity and location
Operating Station	10–B:C	1.
Machinery Space	40–B:C	1 in the vicinity of the exit.
Open Vehicle Deck	40–B	1 for every 10 vehicles.
Accommodation Space	2–A	1 each for each 2,500 square feet (762 meters) or fraction thereof.
Galley	40–B:C	1.
Pantry, concession stand	2–A	1 in the vicinity of the exit.

(c) A vehicle deck without a fixed sprinkler system and exposed to weather must have one 40–B portable fire extinguisher for every five vehicles, located near an entrance to the space.

(d) The frame or support of each semi-portable fire extinguisher permitted by paragraph (a) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

PART 182—MACHINERY INSTALLATION

■ 267. The authority citation for part 182 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 268. Revise § 182.720(a) to read as follows:

§ 182.720 Nonmetallic piping materials.

(a) Rigid nonmetallic materials (plastic) may be used only non-vital systems and in accordance with paragraphs (c) and (d) of this section. Alternatively, piping systems meeting the requirements of § 56.60–25(a) of this chapter may be used, provided that the installation requirements of paragraphs (c) and (d) of this section are met.

* * * * *

PART 185—OPERATIONS

■ 269. The authority citation for part 185 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 270. In § 185.612—

■ a. In paragraph (d), remove the word "alarm" and add, in its place, the word "indicator"; and

■ b. Revise paragraph (e) to read as follows:

§ 185.612 Fire protection equipment.

* * * * *

(e) An indicator for a fire detection and alarm system must be conspicuously marked in clearly legible letters "FIRE ALARM".

* * * * *

PART 188—GENERAL PROVISIONS

■ 271. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277, sec. 1–105; Department of Homeland Security Delegation No. 0170.1(II)(92)(a), (92)(b).

■ 272. In § 188.01–3, add a sentence to the end of the section to read as follows:

§ 188.01–3 Scope of regulations.

* * * The regulations in this subchapter (parts 188, 189, 190, and 193 through 196) have preemptive effect over State or local regulations in the same field.

■ 273. Add § 188.01–5 to read as follows:

§ 188.01–5 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2010 Edition, effective December 5, 2009, IBR approved for § 189.25–20(a).

(2) [Reserved]

PART 189—INSPECTION AND CERTIFICATION

■ 274. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 3307; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 275. Amend § 189.25–20 as follows:

■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. In paragraph (a) introductory text, remove the third sentence; and

■ c. Revise paragraph (a)(1) to read as follows:

§ 189.25–20 Fire extinguishing equipment.

(a) * * *

(1) All portable fire extinguishers and semi-portable fire extinguishing systems must be inspected and maintained in accordance with NFPA 10 (incorporated by reference, see § 188.01–5 of this chapter) as amended here:

(i) Certification or licensing by a state or local jurisdiction as a fire extinguisher servicing agency will be accepted by the Coast Guard as meeting the personnel certification requirements of NFPA 10 for annual maintenance and recharging of extinguishers.

(ii) Monthly inspections required by NFPA 10 may be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iii) Non-rechargeable or non-refillable extinguishers must be inspected and maintained in accordance with NFPA 10; however, the annual maintenance need not be conducted by a certified person and can be conducted by the owner, operator, person-in-charge, or a designated member of the crew.

(iv) The owner or managing operator must provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility must perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

* * * * *

PART 190—CONSTRUCTION AND ARRANGEMENT

■ 276. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 277. Amend § 190.07–1 as follows:

■ a. In paragraphs (a) and (b)—

■ i. Remove the words "and over" and add, in their place, the words "or more"; and

■ ii. Remove the word "shall."

■ b. In paragraph (c), remove the word "shall" and add, in its place, the word "must";

■ c. In paragraph (d), remove the word "shall" and add, in its place, the word "must"; and

■ d. Add paragraph (e) to read as follows:

§ 190.07–1 Application.

* * * * *

(e) Structural fire protection requirements in § 92.07–1(c) of this chapter may be considered equivalent to the provisions of this subpart.

PART 193—FIRE PROTECTION EQUIPMENT

■ 278. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 279. Revise § 193.01–3(a) and (c) to read as follows:

§ 193.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG–ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593–7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

(c) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 617–770–3000, *http://www.nfpa.org.*

(1) NFPA 13, Standard for the Installation of Sprinkler Systems, 2010 Edition, effective August 26, 2009, IBR approved for § 193.30–1.

(2) [Reserved]

■ 280. Amend § 193.01–5 as follows:

■ a. In paragraph (a), after the words "vessels of less than 300 gross tons, where", remove the words "fire detecting or"; and remove the word "shall" and add, in its place, the word "must"; and

■ b. Add paragraph (b) to read as follows:

§ 193.01–5 Equipment installed but not required.

* * * * *

(b) Use of non-approved fire detection systems may be acceptable as excess equipment provided that—

(1) Components are listed by an independent, nationally recognized testing laboratory as set forth in 29 CFR 1910.7, and are designed, installed, tested, and maintained in accordance with an appropriate industry standard and the manufacturer's specific guidance;

(2) Installation conforms to the requirements of 46 CFR chapter I,

subchapter J (Electrical Engineering), especially the hazardous location electrical installation regulations in 46 CFR 111.105; and

(3) Coast Guard plan review is completed for wiring plans.

■ 281. In § 193.10–5—

■ a. Revise the section heading and paragraph (a);

■ b. In paragraph (b), after the words "On vessels of 1,000 gross tons", remove the words "and over" and add, in their place, the words "or more"; and remove the word "shall" in the first sentence and add, in its place, the word "must";

■ c. In paragraph (c), remove the word "five" and add, in its place, the word "fire"; and remove the word "shall" and add, in its place, the word "must";

■ d. In paragraphs (d), (e), and (g), remove the word "shall" and add, in its place, the word "must";

■ e. In paragraph (f), remove the word "shall" in the second sentence and add, in its place, the word "may", and remove the word "shall" in the third sentence and add, in its place, the word "must";

■ f. Revise paragraph (h); and

■ g. In paragraph (i)(1)(ii), remove the section number "§ 193.10–5(i)(1)(i)" and add, in its place, the section number "§ 193.10–5(i)(1)(i)(B)".

The revisions read as follows:

§ 193.10–5 Fire pumps.

(a) Vessels must be equipped with independently driven fire pumps in accordance with Table 193.10–5(a) of this section.

TABLE 193.10–5(a)—REQUIRED FIRE PUMP SYSTEM

Gross tons		Minimum number of pumps	Hose and hydrant size, inches	Nozzle orifice size, inches	Length of hose, feet
Over	Not over				
....	100	[1] 1	[1] 1½	[1] ½	50
100	1,000	1	1½	⅝	50
1,000	1,500	2	1½	⅝	50
1,500	....	2	[2] 2½	[2] ⅞	[2] 50

[1] On vessels of 65 feet (19.8 meters) in length or less, ¾ inch hose of good commercial grade together with a commercial garden hose nozzle may be used. The pump may be hand operated and the length of hose must be sufficient to assure coverage of all parts of the vessel.

[2] 75 feet (22.86 meters) of 1½ inch hose and ⅝ inch nozzle may be used where specified by § 193.10–10(b) for interior locations and 50 feet (15.24 meters) of 1½ inch hose may be used in exterior locations on vessels in other than ocean or coastwise services. Vessels on ocean or coastwise services may substitute two 1½ inch outlets with two 1½ inch hoses supplied through a wye connection in exterior locations.

* * * * *

(h) Where two fire pumps are required on vessels with main or auxiliary oil-fired boilers or with internal combustion propulsion machinery, the pumps must be located in separate spaces. The pumps, sea connections, and sources of power must be arranged to ensure that a fire in any one space will not put all of the fire pumps out of operation. However, where it is shown to the satisfaction of the Commandant that it is unreasonable or impracticable to meet this requirement, the installation of a fixed fire extinguishing system may be accepted as an alternate method of extinguishing any fire that would affect the powering and operation for the required fire pumps.

* * * * *

■ 282. In § 193.10–10—

■ a. Remove the word "shall" wherever it appears and add, in its place, the word "must";

■ b. In paragraph (a), after the words "as noted in Table 193.10–5(a)", add the words "of this subpart";

■ c. Revise paragraph (b);

■ d. In paragraph (c), remove the words "and over" wherever they appear and add, in their place, the words "or more";

■ e. In paragraph (g), after the words "with nozzle attached and a spanner", add the word "wrench";

■ f. In paragraph (h), remove the words "Fire hose" and add, in their place, the word "Firehoses";

■ g. In paragraph (j)(1), after the words "and in the immediate vicinity of each laboratory;", add the word "and";

■ h. In paragraph (j)(2), remove the number "1000" and add, in its place, the number "1,000"; and

■ i. In paragraph (m)(3), after the words "is permitted by Table 193.10–5(a)", add the words "of this subpart"; and

■ j. In paragraph (m)(4), remove the words "fire hose" wherever they appear and add, in their place, the word "firehose".

The revision reads as follows

§ 193.10–10 Fire hydrants and hose.

* * * * *

(b) In 2½-inch hose and hydrants specified in Table 193.10–5(a) of this subpart, on vessels of more than 1,500 gross tons, the hydrants in interior locations may have wye connections for 1½-inch hose. In these cases, the hose must be 75 feet (22.86 meters) in length, and only one hose will be required at each fire station; however, if all such stations can be satisfactorily served with 50-foot lengths, 50-foot hose may be used. The hydrants for exterior locations may substitute two 1½-inch outlets, each with a 1½-inch hose, supplied through a wye connection.

* * * * *

■ 283. Revise § 193.30–1 to read as follows:

§ 193.30–1 Application

Automatic sprinkling systems must comply with Chapter 25 of NFPA 13 (incorporated by reference, see § 193.01–3).

§ 193.50–1 [Amended]

■ 284. Amend § 193.50–1 as follows:

■ a. In paragraph (a), remove the word "shall";

■ b. In paragraphs (b) and (c), remove the word "shall" and add, in its place, the word "must"; and

■ c. In paragraph (c), remove the word "semiportable" and add, in its place, the word "semi-portable".

§ 193.50–5 [Removed]

■ 285. Remove § 193.50–5.

■ 286. Revise § 193.50–10 to read as follows:

§ 193.50–10 Location.

(a) Approved portable fire extinguishers and semi-portable fire extinguishing systems must be installed in accordance with Table 193.50–10(a) of this section. The location of the equipment must be to the satisfaction of the Officer in Charge, Marine Inspection (OCMI). Nothing in this paragraph must be construed as limiting the OCMI from requiring such additional equipment as he or she deems necessary for the proper protection of the vessel.

(b) Table 193.50–10(a) indicates the minimum required classification for each space listed. Extinguishers with larger numerical ratings or multiple letter designations may be used if the extinguishers meet the requirements of the table.

(c) Semi-portable fire extinguishing systems must be located in the open so as to be readily seen.

(d) If portable fire extinguishers are not located in the open or behind glass so that they may be readily seen, they may be placed in enclosures together with the firehose, provided such enclosures are marked as required by § 196.37–15 of this subchapter.

TABLE 193.50–10(a)—CARRIAGE OF PORTABLE FIRE EXTINGUISHER AND SEMI-PORTABLE FIRE EXTINGUISHING SYSTEMS

Space	Minimum required rating	Quantity and location
Safety Areas		
Wheelhouse or fire control room		None.
Stairway and elevator enclosures		None.
Communicating corridors	2–A	1 in each main corridor not more than 150 ft apart. (May be located in stairways.)
Lifeboat embarkation and lowering stations		None.
Radio room	20–B:C[1]	2 in the vicinity of the exit.[1]
Accommodations		
Staterooms, toilet spaces, public spaces, offices, lockers, isolated storerooms, pantries, open decks, etc.		None.
Service Spaces		
Galleys	40–B:C	1 for each 2,500 sq ft or fraction thereof.
Machinery Spaces		
Paint and lamp rooms	40–B	1 outside space in the vicinity of the exit.
Accessible baggage, mail, and specie rooms, and storerooms	2–A	1 for each 2,500 sq ft or fraction thereof located in the vicinity of the exits, either inside or outside the spaces.
Carpenter shop and similar spaces	2–A	1 outside the space in the vicinity of the exit.
Coal-fired boilers: Bunker and boiler space		None.
Oil-fired boilers: Spaces containing oil-fired boilers, either main or auxiliary, or their fuel-oil units.	40–B	2 required.[2]
	160–B	1 required.[3]
Internal combustion or gas turbine propelling machinery spaces.	40–B	1 for each 1,000 brake horsepower, but not fewer than 2 nor more than 6.[4]
	120–B	1 required.[5] [6]
Electric propulsive motors or generators of open type	40–B:C	1 for each propulsion motor or generator unit.
Enclosed ventilating systems for motors and generators of electric propelling machinery.		None.
Auxiliary Spaces		
Internal combustion gas turbine	40–B	1 outside the space in vicinity of the exit.[6]
Electric emergency motors or generators	40–B:C	1 outside the space in vicinity of the exit.[7]
Steam		None required.
Trunks to machinery spaces		None required.
Fuel tanks		None required.
Scientific Spaces		
Chemistry laboratory or scientific laboratory	40–B:C	2 for each 300 sq ft of deck space or fraction thereof, with one (1) of each kind located in the vicinity of the exit.
Chemical storeroom	40–B:C	Same as for the chemistry laboratory.
Spare Units		
	2–A	10 percent of required units rounded up.
	40–B:C	10 percent of required units rounded up.

[1] For vessels on an international voyage, substitute one 40–B:C in vicinity of the exit.
[2] Vessels of fewer than 1,000 GT require one.
[3] Vessels of fewer than 1,000 GT may substitute one 120–B.
[4] Only one required for motorboats.
[5] If oil burning donkey boiler fitted in space, the 160–B previously required for the protection of the boiler may be substituted. Not required where a fixed carbon dioxide system is installed.
[6] Not required on vessels of fewer than 300 GT if fuel has a flash-point higher than 110 °F.
[7] Not required on vessels of fewer than 300 GT.

(e) Portable fire extinguishers and their stations must be numbered in accordance with § 196.37–15 of this subchapter.

(f) Portable or semi-portable extinguishers, which are required on their nameplates to be protected from freezing, must not be located where freezing temperatures may be expected.

§ 193.50–15 [Removed]

■ 287. Remove § 193.50–15.

■ 288. In § 193.50–20:

■ a. Revise the section heading;

■ b. In paragraphs (a) and (b), remove the words "size III, IV, and V" and add, in their place, the word "semi-portable", and after the words "required by Table 193.50–10(a)", add the words "of this subpart"; and

■ c. Add paragraph (c).

The revision and addition read as follows:

§ 193.50–20 Semi-portable fire extinguishers.

* * * * *

(c) Semi-portable extinguishers must be fitted with suitable hose and nozzle, or other practicable means, so that all areas of the space can be protected.

■ 289. Add § 193.50–80 to read as follows:

§ 193.50–80 Locations and number of fire extinguishers required for vessels constructed prior to August 22, 2016.

Vessels contracted for prior to August 22, 2016, must meet the following requirements:

(a) Previously installed extinguishers with extinguishing capacities smaller than what is required in Table 193.50–10(a) of this subpart need not be replaced and may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

■ 290. Revise § 193.50–90 to read as follows:

§ 193.50–90 Vessels contracted for prior to March 1, 1968.

(a) Vessels contracted for prior to March 1, 1968, must meet the following requirements:

(1) Except as specifically modified by this paragraph, the requirements of § 193.50–10 must be complied with insofar as the number and general type of equipment is concerned.

(2) Existing installations previously approved, but not meeting the applicable requirements of § 193.50–10, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection, and they are in general agreement with the degree of safety prescribed by Table 193.50–10(a) of this subpart. Minor modifications may be made to the same standard as the original installation, provided that in no case will a greater departure from the standards of Table 193.50–10(a) of this subpart be permitted than presently exists.

(3) All new equipment and installations must meet the applicable requirements in this subpart for new vessels.

Dated: June 22, 2016.

J. G. Lantz,

Director of Commercial Regulations and Standards, U. S. Coast Guard.

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Part IV

Office of Management and Budget

Standard Occupational Classification (SOC) Policy Committee's Recommendations for the 2018 SOC; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification (SOC) Policy Committee's Recommendations for the 2018 SOC; Notice

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of Standard Occupational Classification Policy Committee Recommendations to OMB and solicitation of comments.

SUMMARY: Under 31 U.S.C. 1104(d) and 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) is seeking public comment on the Standard Occupational Classification Policy Committee's (SOCPC) recommendations presented in this notice for revising the 2010 Standard Occupational Classification (SOC) for 2018. The review and revision of the 2010 SOC is intended to be completed by the end of 2016 and then released for use beginning in reference year 2018.

The SOC is designed to reflect the current occupational structure of the United States; it classifies all occupations in which work is performed for pay or profit. The SOC is intended to cover all such jobs in the national economy, including occupations in the public, private, and military sectors. All Federal agencies that publish occupational data for statistical purposes are required to use the SOC; State and local government agencies are strongly encouraged to use this national system to promote a common language for categorizing and analyzing occupations.

In a prior **Federal Register** notice (79 FR 29620, May 22, 2014), OMB and the SOCPC requested comments on: (1) The proposed revision to the 2010 SOC Classification Principles, (2) the intention to retain the 2010 SOC Coding Guidelines, (3) the intention to retain the 2010 SOC Major Group structure, (4) the correction, change, or combination of 2010 SOC detailed occupations, and (5) proposals for new detailed occupations.

The classification principles, coding guidelines, and occupations recommended in this notice reflect consideration of the comments received in response to the May 22, 2014, notice and represent the SOCPC's recommendations to OMB. OMB, in consultation with the SOCPC, plans to consider comments in response to this notice in making its final decisions for the 2018 revision and plans to publish its decisions in the **Federal Register**. The SOCPC then plans to finish preparing the *Standard Occupational Classification Manual 2018* for publication, including finalizing occupational definitions, selecting associated job titles, and developing a crosswalk to the 2010 SOC.

Request for Comments: In addition to general comments on the SOCPC's recommendations for the 2018 SOC, OMB welcomes comments specifically addressing: (1) Changes to the 2018 SOC Classification Principles and Coding Guidelines recommended by the SOCPC; (2) the proposed hierarchical structure of the 2018 SOC, including changes to the major, minor, broad, and detailed occupation groups; (3) the titles, placement, and codes of new occupations that the SOCPC is recommending be added in the revised 2018 SOC; and (4) preliminary definitions for revised and proposed 2018 SOC occupations. The proposed hierarchical structure and preliminary definitions for the revised 2018 SOC are available on the SOC Web site at: *www.bls.gov/soc.* All comments submitted in response to this notice may be made available to the public, including by posting them on relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.

Please include contact information and a phone number or email address with your comments to facilitate follow-up if necessary.

DATES: To ensure consideration of comments on the SOCPC's recommendations detailed in this notice, please submit all written comments as soon as possible, but no later than September 20, 2016. Comments received with subject "2018 SOC" by the date specified above will be included as part of the official record. Please be aware of delays in mail processing at Federal facilities due to heightened security. Respondents are encouraged to send comments via email, FAX, or *http://www.regulations.gov* (discussed in **ADDRESSES** below).

ADDRESSES: As indicated in the *SOC Manual 2010,* OMB established the SOC Policy Committee (SOCPC), chaired by the Bureau of Labor Statistics (BLS), to ensure that the SOC remains relevant and meets the needs of individuals and organizations. Accordingly, comments may be sent to: Standard Occupational Classification Policy Committee, U.S. Bureau of Labor Statistics, Suite 2135, 2 Massachusetts Avenue NE., Washington, DC 20212. Telephone number: (202) 691–6500; fax number: (202) 691–6444; or emailed to *soc@bls.gov* with the subject "2018 SOC." Because of delays in the receipt of regular mail related to heightened security, respondents are encouraged to use electronic communication methods. Comments may be sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents published in the **Federal Register** that are open for comment. Simply type "2018 SOC" (in quotation marks) in the search box for "Rules, Comments, Adjudications or Supporting Documents" and follow the instructions.

Electronic availability. This document is available on the Internet from the SOC Web site at *http://www.bls.gov/soc* under the section titled *"2018 SOC Revision Process."* To obtain this document via email, send a request to *soc@bls.gov.* The SOC Web site contains information on the purpose, background, and structure of the SOC, as well as additional guidance on providing input to the SOCPC for consideration by OMB during the SOC revision for 2018.

Availability of comment materials. OMB and the SOCPC welcome comments related to any aspect of the proposed 2018 SOC. All comments received may be made available to the public electronically or by visiting the BLS during normal business hours, 8:15 a.m. to 4:45 p.m., in Suite 2135, 2 Massachusetts Avenue NE., Washington, DC 20212. Please call BLS at (202) 691–6500 to make an appointment if you wish to physically view the comments received in response to this or previous notices regarding the SOC. Because all comments may be available to the public, please do not include in your comments information of a confidential nature, such as sensitive personal or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Information and Regulatory Affairs, OMB, 10201 New Executive Office Building, 725 17th Street NW., Washington, DC 20503; email: *pbugg@omb.eop.gov;* telephone number: (202) 395–3095; fax number: (202) 395–7245.

SUPPLEMENTARY INFORMATION:

Purpose and History of the SOC

The U.S. Federal statistical system is decentralized, with 13 principal statistical agencies that have data collection as their primary mission and over 125 other agencies that collect data along with carrying out another primary mission. OMB coordinates the Federal statistical system by developing and overseeing the implementation of Government-wide principles, policies, standards, and guidelines concerning the presentation and dissemination of statistical information. The Standard Occupational Classification (SOC) is one of several standard classification systems established by OMB to ensure coordination of Federal statistical activities. All Federal agencies that publish occupational data for statistical purposes are required to use the SOC to increase data comparability (and thus, data utility) across Federal programs.

The SOC classifies all occupations in the economy, including private, public, and military occupations, in order to provide a means to compare occupational data produced for statistical purposes across agencies. It is designed to reflect the current occupational work structure in the U.S. and to cover all occupations in which work is performed for pay or profit. Information about occupations—employment levels, trends, pay and benefits, demographic characteristics, skills required, and many other items—is widely used by individuals, businesses, researchers, educators, and public policy-makers. The SOC helps ensure that occupational data produced across the Federal statistical system are comparable and can be used together in analysis. It is important to note that the SOC is designed and maintained solely for statistical purposes. Consequently, although the classification may also be used for various nonstatistical purposes (*e.g.,* for administrative, regulatory, or taxation functions), the requirements of government agencies or private users that choose to use the SOC for nonstatistical purposes play no role in its development or revision.

To reflect changes in the economy and in the nature of work, the revision of the SOC must be considered periodically. The SOC was first issued in 1977, with a subsequent revision in 1980. Although the 1980 SOC was the basis for the occupational classification system used in the Census of Population and Housing in 1980 and 1990, neither the 1977 nor the 1980 SOC was widely used for other Federal data sources. With the implementation of the 2000 SOC, for the first time all major occupational data sources produced by the Federal statistical system provided comparable data, greatly improving the utility of the data. The 2010 SOC revision structured data collection, improved comparability, and maintained currency.

The SOCPC, comprised of representatives from ten Federal agencies, was originally chartered in 2005 by OMB to coordinate the revision of the SOC for 2010. Beginning in 2006, OMB published notices in the **Federal Register** to solicit public comment, questions, and suggestions for the 2010 SOC. The notices resulted in hundreds of comments. Based on these comments, the SOCPC formulated recommendations to OMB. Working with the SOCPC, OMB made its final decisions on the 2010 SOC, published these decisions in the **Federal Register** in January 2009, and then published final definitions for all detailed 2010 SOC occupations in the *Standard Occupational Classification Manual 2010.*

The 2010 SOC revision resulted in both major and minor changes to the 2000 SOC. Although the 2010 SOC retained the basic 2000 SOC Major Group structure, its revision increased clarity, corrected errors, and accounted for changes in technology and in the nature or organization of work in our economy. The 821 detailed occupations in the 2000 SOC expanded to 840 in 2010—a net increase that combined some occupations with others and added new ones as well. Meanwhile, almost half of the detailed occupations in the 2010 SOC remained the same as in 2000. However, there were significant updates to information technology, healthcare, and human resource occupations.

The 2010 SOC formalized a set of Coding Guidelines to help data collectors code occupations more consistently and to help data users better understand how occupations are classified. The Direct Match Title File was also introduced as a new feature. The Direct Match Title File lists associated job titles for detailed SOC occupations. Each of these titles is directly matched to a single SOC occupation. All workers with a job title listed in the Direct Match Title File are classified in only one detailed SOC occupation code. Documents related to the Direct Match Title File are available at *http://www.bls.gov/soc/#materials.* The Direct Match Title File serves as the source for the revamped illustrative examples provided for each occupation in the *SOC Manual 2010.*

OMB charged the SOCPC to continue as a standing committee to facilitate smooth processes for supporting the use of the SOC and for conducting future SOC revisions. Given the multiple interdependent programs that rely on the SOC, coordinating the decennial revisions of the SOC with these programs is best accomplished by timing revisions of the SOC for the year following North American Industry Classification System revisions, which occur for years ending in 2 and 7. The next such year is 2018, which has the additional benefit of coinciding with the beginning year of the American Community Survey's five-year set of surveys centered on the 2020 Decennial Census.

The SOC Revision for 2018—Overview of the Revision Process

To initiate the formal 2018 SOC revision process, OMB and the SOCPC requested public comment in a May 22, 2014, **Federal Register** notice on: (1) The proposed revision to the 2010 SOC Classification Principles, (2) the intention to retain the 2010 SOC Coding Guidelines, (3) the intention to retain the 2010 SOC Major Group structure, (4) the correction, change, or combination of 2010 SOC detailed occupations, and (5) proposals for new detailed occupations. The comment period for the May 22, 2014, notice closed on July 21, 2014.

To carry out the bulk of the revision effort, the SOCPC created eight workgroups to examine occupations in the following Major Groups:

- Management; Business and Financial Operations; and Legal Occupations (codes 11–0000, 13–0000, and 23–0000)
- Computer and Mathematical; Architecture and Engineering; and Life, Physical, and Social Science Occupations (codes 15–0000 through 19–0000)
- Community and Social Service; Healthcare Practitioners and Technical; and Healthcare Support Occupations (codes 21–0000, 29–0000, and 31–0000)
- Education, Training, and Library; and Arts, Design, Entertainment, Sports, and Media Occupations (codes 25–0000 through 27–0000)
- Protective Service; Food Preparation and Serving Related; Building and Grounds Cleaning and Maintenance; Personal Care and Service; Sales and Related; and Office and Administrative Support Occupations (codes 33–0000 through 43–0000)
- Farming, Fishing, and Forestry; Construction and Extraction; Installation, Maintenance, and Repair;

and Transportation and Material Moving Occupations (codes 45–0000 through 49–0000 and 53–0000)

- Production Occupations (code 51–0000), and
- Military Specific Occupations (code 55–0000).

The workgroups were charged with reviewing hundreds of comments received in response to the May 22, 2014, **Federal Register** notice and providing recommendations to the SOCPC. Guided by the Classification Principles and Coding Guidelines, the SOCPC reviewed the recommendations from the workgroups and reached decisions by consensus. In response to comments, the SOCPC in its recommendations added occupations, revised occupational titles and definitions, and made changes to the structure and placement of individual occupations. Materials available on the SOC Web site at: *www.bls.gov/soc* reflect these recommended revisions to the 2010 SOC for 2018.

Significant Changes in the 2018 SOC

In response to the May 22, 2014, **Federal Register** notice, OMB and the SOCPC received over 300 public comments. The SOCPC considered all comments and recommended to OMB several changes to the SOC Classification Principles, Coding Guidelines, structure, and detailed definitions.

2018 SOC Classification Principles

The SOC Classification Principles form the basis on which the SOC is structured and provide a foundation for classification decisions. The SOCPC recommends revising the 2010 SOC Classification Principles, available at *http://www.bls.gov/soc/#materials,* as described in the May 22, 2014, notice and altering the first sentence of Classification Principle 8 to remove the word "residual" and inserting the clause "even though such workers may perform a distinct set of work activities" at the end of the second sentence.

Accordingly, the recommended revisions to the 2010 Classification Principles for use in the 2018 SOC would result in the following set of 2018 SOC Classification Principles:

1. The SOC covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises by family members who are not directly compensated. It excludes occupations unique to volunteers. Each occupation is assigned to only one occupational category at the most detailed level of the classification.

2. Occupations are classified based on work performed and, in some cases, on the skills, education and/or training needed to perform the work.

3. Workers primarily engaged in planning and the directing of resources are classified in management occupations in Major Group 11–0000. Duties of these workers may include supervision.

4. Supervisors of workers in Major Groups 13–0000 through 29–0000 usually have work experience and perform activities similar to those of the workers they supervise, and therefore are classified with the workers they supervise.

5. Workers in Major Group 31–0000 Healthcare Support Occupations assist and are usually supervised by workers in Major Group 29–0000 Healthcare Practitioners and Technical Occupations, and therefore there are no first-line supervisor occupations in Major Group 31–0000.

6. Workers in Major Groups 33–0000 through 53–0000 whose primary duty is supervising are classified in the appropriate first-line supervisor category because their work activities are distinct from those of the workers they supervise.

7. Apprentices and trainees are classified with the occupations for which they are being trained, while helpers and aides are classified separately because they are not in training for the occupation they are helping.

8. If an occupation is not included as a distinct detailed occupation in the structure, it is classified in an appropriate "All Other" occupation. "All Other" occupations are placed in the structure when it is determined that the detailed occupations included in a broad occupation group do not account for all of the workers in the group, even though such workers may perform a distinct set of work activities. These occupations appear as the last occupation in the group with a code ending in "9" and are identified in their title by having "All Other" appear at the end.

9. The U.S. Bureau of Labor Statistics and the U.S. Census Bureau are charged with collecting and reporting data on total U.S. employment across the full spectrum of SOC Major Groups. Thus, for a detailed occupation to be included in the SOC, either the Bureau of Labor Statistics or the Census Bureau must be able to collect and report data on that occupation.

10. To maximize the comparability of data, time series continuity is maintained to the extent possible.

2018 SOC Coding Guidelines

The SOC Coding Guidelines are intended to assist users when assigning SOC codes and titles to survey responses, and in other coding activities. The SOCPC recommends: (1) Removing the last sentence from Coding Guideline 3 which refers to FAQs in the 2010 SOC User Guide, and (2) altering Coding Guideline 4, in line with the changes proposed for Classification Principle 8 above. Accordingly, the recommended revisions to the 2010 Coding Guidelines for use in the 2018 SOC would result in the following set of 2018 SOC Coding Guidelines:

1. A worker should be assigned to an SOC occupation code based on work performed.

2. When workers in a single job could be coded in more than one occupation, they should be coded in the occupation that requires the highest level of skill. If there is no measurable difference in skill requirements, workers should be coded in the occupation in which they spend the most time. Workers whose job is to teach at different levels (*e.g.*, elementary, middle, or secondary) should be coded in the occupation corresponding to the highest educational level they teach.

3. Data collection and reporting agencies should assign workers to the most detailed occupation possible. Different agencies may use different levels of aggregation, depending on their ability to collect data.

4. Workers who perform activities not described in any distinct detailed occupation in the SOC structure should be coded in an appropriate "All Other" occupation. These occupations appear as the last occupation in a group with a code ending in "9" and are identified by having the words "All Other" appear at the end of the title.

5. Workers in Major Groups 33–0000 through 53–0000 who *spend 80 percent or more of their time performing supervisory activities* are coded in the appropriate first-line supervisor category in the SOC. In these same Major Groups (33–0000 through 53–0000), persons with supervisory duties who *spend less than 80 percent of their time supervising are coded with the workers they supervise.*

6. Licensed and non-licensed workers performing the same work should be coded together in the same detailed occupation, except where specified otherwise in the SOC definition.

The 2018 SOC Structure and Detailed Definitions

The SOC classifies workers at four levels of aggregation: (1) Major Group;

(2) Minor Group; (3) Broad Occupation; and (4) Detailed Occupation. The 2010 SOC contains 840 detailed occupations, aggregated into 461 broad occupations. In turn, the 2010 SOC combines these 461 broad occupations into 97 minor groups and 23 major groups. The SOCPC intends to retain 2010 SOC major group structure for 2018. In addition, the SOCPC proposes altering the title for Major Group 25–0000 to read, "Educational Instruction and Library Occupations." Accordingly, the recommended revision would result in the following set of 2018 SOC Major Groups:

11–0000	Management Occupations
13–0000	Business and Financial Operations Occupations
15–0000	Computer and Mathematical Occupations
17–0000	Architecture and Engineering Occupations
19–0000	Life, Physical, and Social Science Occupations
21–0000	Community and Social Service Occupations
23–0000	Legal Occupations
25–0000	Educational Instruction and Library Occupations
27–0000	Arts, Design, Entertainment, Sports, and Media Occupations
29–0000	Healthcare Practitioners and Technical Occupations
31–0000	Healthcare Support Occupations
33–0000	Protective Service Occupations
35–0000	Food Preparation and Serving-Related Occupations
37–0000	Building and Grounds Cleaning and Maintenance Occupations
39–0000	Personal Care and Service Occupations
41–0000	Sales and Related Occupations
43–0000	Office and Administrative Support Occupations
45–0000	Farming, Fishing, and Forestry Occupations
47–0000	Construction and Extraction Occupations
49–0000	Installation, Maintenance, and Repair Occupations
51–0000	Production Occupations
53–0000	Transportation and Material Moving Occupations
55–0000	Military Specific Occupations

The SOCPC recommends revising the 2010 SOC for 2018 to include 869 detailed occupations, aggregated into 457 broad occupations. The 2018 SOC would combine these 457 broad occupations into 98 minor groups and the 23 major groups described above. Of the 869 proposed detailed occupations for the 2018 SOC, 623 would remain exactly the same as in the 2010 SOC, while 246 would experience some type of change to the code, title, and/or definition. Significant updates were made to the management, business, finance, information technology, engineering, social science, education, media, healthcare, personal care, extraction, and transportation occupations. Among the occupations new to the proposed structure are "Project Management Specialists" (13–1082), "Sustainability Analysts" (13–1191), "Financial Risk Specialists" (13–2054), "Data Scientists" (15–2051), "Calibration Technologists and Technicians" (17–3028), "Health Information Technology, Health Information Management, and Health Informatics Specialists and Analysts" (29–9021), and "Surgical Assistants" (29–9093). Within the "Computer and Mathematical Occupations" major group, the "Computer Occupations" minor group code would be changed from 15–1100 to 15–1200 to acknowledge the many changes that have taken place within the group. Within the "Healthcare Practitioners and Technical Occupations" major group, the 2010 SOC broad occupation group 29–1060 "Physicians and Surgeons" would be disaggregated into two new broad occupations "Physicians" (29–1210) and "Surgeons" (29–1240). Within the "Physicians" broad occupation group, new detailed occupations would be added for "Cardiologists" (29–1212), "Dermatologists (29–1213), "Emergency Medicine Physicians" (29–1214), "Neurologists" (29–1217), "Physicians, Pathologists" (29–1222), and "Radiologists" (29–1224). Within the "Surgeons" broad occupation group, new detailed occupations would be added for "Ophthalmologists" (29–1241), "Orthopaedic Surgeons" (29–1242), and "Surgeons, Pediatric" (29–1243). The full proposed hierarchical structure and types of changes to the detailed occupation definitions are available on the SOC Web site at *www.bls.gov/soc.*

Responses to Comments

In response to the May 22, 2014, **Federal Register** notice, OMB and the SOCPC received over 300 public comments. Each individual comment received a unique docket number when conveyed to the SOC Coordinating Team at the Bureau of Labor Statistics (BLS). In some cases, the SOCPC considered each part of a docket number separately, adding a decimal point and two digits to indicate each part, (*e.g.,* 1.0071.01, 1.0071.02, etc.). Dockets providing the same or essentially similar comments or suggestions were reviewed simultaneously by the SOCPC. The SOCPC responses for all dockets are available on the SOC Web site at *www.bls.gov/soc.*

Request for Comments

In addition to general comments on the SOCPC's recommendations for the 2018 SOC, OMB welcomes comments specifically addressing: (1) Changes to the 2018 SOC Classification Principles and Coding Guidelines recommended by the SOCPC; (2) the proposed hierarchical structure of the 2018 SOC, including changes to major, minor, broad, and detailed occupation groups; (3) the titles, placement, and codes of new occupations that the SOCPC is recommending be added in the revised 2018 SOC; and (4) preliminary definitions for revised and proposed new 2018 SOC occupations.

Preliminary Definitions for 2018 SOC Detailed Occupations

Generally, the definitions for SOC detailed occupations contain the minimum description needed to determine which workers would be classified in a particular occupation. Comments are welcome on corrections concerning typographical or definitional errors and other changes to the proposed 2018 SOC detailed occupations, including the combination of occupations. Suggested changes to proposed detailed occupations may address the occupational title, definition, or its placement in the structure.

While conducting initial outreach before the first **Federal Register** notice was published in May 2014, the SOCPC emphasized that commenters who wished to recommend new occupations should do so in response to the first Notice, so that significant changes could be considered earlier in the process. Commenters who are considering proposing new occupations should carefully follow the guidance contained in the May 22, 2014, notice and supplemental materials available on the SOC Web site. Potential commenters are reminded that the SOC coding system is designed to allow for delineation of occupations below the detailed occupation level for parties wishing to collect additional levels of detail, as stated in Coding Guideline 3. OMB recommends that those needing extra detail use the structure of the Department of Labor's Employment and Training Administration's Occupational Information Network (O*NET), which adds a decimal point and additional digit(s) after the sixth digit of SOC codes.

Next Steps

OMB, in consultation with the SOCPC, plans to consider comments in response to this notice in making its final decisions for the 2018 SOC revision and plans to publish its decisions in the **Federal Register**. The SOCPC plans to then finish preparing the *Standard Occupational Classification Manual 2018* for publication, including finalizing occupational definitions, selecting associated job titles, and developing a crosswalk to the 2010 SOC.

Instructions for Providing SOC Comments

Commenters are strongly encouraged to carefully review the Classification Principles and Coding Guidelines, as these guide the SOCPC's recommendations. Comments that reflect these principles and guidelines are likely to be more pertinent to the SOCPC's deliberations. Because the SOCPC expects to receive hundreds of comments in response to this notice, it would appreciate receiving comments that are concise and well-organized.

OMB expects to consider the final recommendations and approve the final 2018 SOC by spring 2017. After the 2018 SOC is approved, the SOCPC plans to prepare the *Standard Occupational Classification Manual 2018* and supporting materials, make them available to the public, and continue its role of maintaining the classification leading up to the next revision, currently contemplated for 2028.

Howard A. Shelanski,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2016–17424 Filed 7–21–16; 8:45 am]

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FEDERAL REGISTER

Vol. 81 Friday,
No. 141 July 22, 2016

Part V

The President

Notice of July 20, 2016—Continuation of the National Emergency With Respect to Transnational Criminal Organizations

Federal Register
Vol. 81, No. 141
Friday, July 22, 2016

Presidential Documents

Title 3—

The President

Notice of July 20, 2016

Continuation of the National Emergency With Respect to Transnational Criminal Organizations

On July 24, 2011, by Executive Order 13581, I declared a national emergency with respect to significant transnational criminal organizations pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the activities of significant transnational criminal organizations.

The activities of significant transnational criminal organizations have reached such scope and gravity that they threaten the stability of international political and economic systems. Such organizations are becoming increasingly sophisticated and dangerous to the United States; they are increasingly entrenched in the operations of foreign governments and the international financial system, thereby weakening democratic institutions, degrading the rule of law, and undermining economic markets. These organizations facilitate and aggravate violent civil conflicts and increasingly facilitate the activities of other dangerous persons.

The activities of significant transnational criminal organizations continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 13581 of July 24, 2011, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 24, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to significant transnational criminal organizations declared in Executive Order 13581.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
July 20, 2016.

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